

WHEATLEY'S
MINING CODE

MINERS AND PROSPECTORS

WASHINGTON AND ALASKA

WITH NOTES AND ANNOTATIONS

AND
FORMS FOR GENERAL USE

W. D. WHEATLEY

OF THE DISTRICT OF COLUMBIA

Mines and Mining

We carry a Large Stock of all the

New and Standard Books

Treating on the above subject in all its Various Branches

*The Largest Stock of New, Standard and Miscellaneous Books
in the Northwest.*

LEGAL BLANKS

We publish the most complete line of Mining and General Legal Blanks
in the Northwest.

We make to order at short notice

Seal Presses for Notarial and Corporation Use
Rubber Stamps, Stencils, Etc.

We Guarantee Best Work and Low Prices

We carry a complete line of

Bank Check Perforators, Numbering Machines, Daters
Postal and Coin Scales

Duplicating Machines of All Kinds

LOWMAN & HANFORD

STATIONERY AND PRINTING CO.

PIONEER PLACE

SEATTLE, WASH.

LEEHEY'S MINING CODE

FOR THE USE OF

MINERS AND PROSPECTORS

— IN —

WASHINGTON AND ALASKA

WITH NOTES AND ANNOTATIONS

— AND —

FORMS FOR GENERAL USE

— BY —

M. D. LEEHEY

ATTORNEY AND COUNSELOR AT LAW

412 PIONEER BUILDING.

SEATTLE, U. S. A.

Until recently of the Bar of Butte, Montana.

SEATTLE, WASH.:

Lowman & Hanford Stationery and Printing Co.

1900

Thwp

979.7

L485

COPYRIGHTED, 1900
BY
M. D. LEEHEY

INTRODUCTORY

This manual is tendered to the public in the belief that it will be found useful to the miners and prospectors in Washington and Alaska. It has been designed primarily for their use, and in its arrangement and preparation their wants have been given first consideration. In size, form and contents it will be found convenient for actual daily use and consultation by the prospector on his trail and the miner in his camp. The purpose has been to make this manual so concise and yet so complete as to be a ready and intelligent guide to the law, and we trust it may find a welcome place in the prospector's pack and in the miner's cabin.

While the work has been designed primarily for the use of miners and prospectors, yet it is not a mere elementary treatise. The fundamental and essential principles of mining law are all presented, though often necessarily very briefly stated in an abridged discussion. This book contains all the mining laws of the United States now in force, all the mining laws of the State of Washington, and all the mining laws relating to Alaska, *including the very latest mining provisions contained in the Carter Act to provide a civil government for Alaska just passed by Congress.* The statement of the more important provisions of the law has been followed by a general discussion of the principles involved. An attempt has been made to explain briefly such questions of law as most often arise in the location of mining claims. The author has also sought to make this manual useful to lawyers by giving a few citations to leading cases and authorities within the scope of the subjects treated. No attempt has been made to give more than a leading case upon each subject, but these citations will serve the further purpose of enabling the reader to verify the statements made, if he choose to do so. The citations and notes at the foot of each page are indicated by consecutive numbers in brackets in the text. The forms are placed in the Appendix. The different subjects, such as Citizenship, Location, Beach Claims, etc., are treated in separate chapters and the laws relating to the particular subject are all stated under that head, thus making the manual a very ready reference book. One wishing to read the acts of Congress, or the laws of Washington or Alaska, section by section as enacted, may do so by the

4

INTRODUCTION.

aid of the index at the back of the book, and a special effort has been made to render this index complete.

The writer acknowledges himself indebted to Hon. E. G. Kreider, Reporter of the Supreme Court of Washington, to Hon. W. L. Jones, Congressman from this state, and especially to Hon. E. B. Howell, of Butte, author of Howell's Miners' Code for Montana and Idaho, many of whose lucid notes have been repeated in this book as the most concise and satisfactory statement possible to be framed.

M. D. L.

Seattle, June 9th, 1900.

ort has been

G. Kreider,
V. L. Jones,
Howell, of
Idaho, many
most concise
M. D. L.

CONTENTS

<i>Chapter.</i>	<i>Page</i>
I. Mineral Lands Subject to Location.....	7
II. Who May Locate Mining Claims,—Citizenship.....	8
III. Discovery of Lode Claims.....	12
IV. Location of Lode Claims.....	15
V. Record of Lode Claim Locations.....	21
VI. Placers.....	24
VII. Mining Rights upon the Beach and Tide Lands in Portions of Alaska including Cape Nome.....	28
VIII. Mining Districts and Local Rules.....	31
IX. Tunnel Rights.....	35
X. Millsites.....	38
XI. Water Rights with Mining Claims.....	39
XII. Coal Lands.....	42
XIII. Timber and Stone Lands.....	44
XIV. Annual Labor on Mining Claims.....	49
XV. Forfeiture to Co-owners.....	52
XVI. Relocation and Amended Location of Mining Claims.....	54
XVII. Mining Partnerships.....	56
XVIII. Procedure to Obtain Patents to Mines.....	58
XIX. Adverse Claims.....	61
XX. Lodes Within Placer Claims.....	63
XXI. Possessory Rights in Mining Claims.....	66
XXII. Rights and Property in Mining Claims and Lease and Sale of the Same.....	67
Appendix A. Forms for General Use.....	73
Appendix B. Miscellaneous Statutory Provisions.....	88
Appendix C. Criminal Statutes.....	93
General Index.....	97

ABBREVIATIONS USED IN THIS WORK

- Bal. Code.* Ballinger's Annotated Codes and Statutes of Washington.
Bar. & Adams. Barringer and Adams' Law of Mines and Mining in the United States.
Cal. California Reports.
Copp. Copp's American Mining Code.
Fed. Rep. or Fed. Federal Reporter.
Howell. Howell's Miners' Code for Montana and Idaho.
L. D. Land Decisions.
Lindley. Lindley on Mines.
Mont. Montana Reports.
Mor. M. R. Morrison's Mining Reports.
Mor. Mng. Rights. Morrison's Mining Rights.
Nev. Nevada Reports.
Pac. Rep. Pacific Reporter.
Rev. Stats. Revised Statutes of the United States (1878).
Saw. Sawyer's Reports.
Sup. Ct. Rep. Supreme Court Reporter.
U. S. United States or United States Supreme Court Reports.
Wash. Washington Reports.

LEEHEY'S MINING CODE

CHAPTER I.

MINERAL LANDS SUBJECT TO LOCATION.

United States Law.

Section 2318, Revised Statutes.—“In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.”

Sec. 2319.—“All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, * * * ”

THE PUBLIC DOMAIN.—The mining laws of the United States have reference only to those mineral-bearing lands situated within the public domain. This, of course, includes Washington, and by Act of Congress, approved May 17, 1884, such mining laws were extended to Alaska (1). From the founding of the government until 1866 it was the policy of Congress to withhold from entry and sale all public lands containing “known mines.” For this reason no laws for the acquisition of such lands were enacted, and the early prospectors, including the California gold miners of 1849, could not acquire title to their lands. This led to the formation of local mining districts and the adoption by the miners in each district of rules for the claiming and working of mines. These rules had no authority in law and depended for their enforcement upon the action of the miners in each district. Gradually, however, a comparative uniformity was obtained in the rules of the various districts, and the first general mining law, enacted by Congress in 1866, recognized to a certain extent these local rules and regulations of miners, and provided a method by which title to mining claims might be acquired. This was followed by the Placer Act of 1870, and the Lode Claim Mining Law of May 10th, 1872, which, with slight modifications, are still in force and constitute the fundamental law upon the sub-

(1) The United States Mining Laws were first extended to Alaska by that act (of May 17, 1884), but the Carter Act of the present Congress contains a similar provision. See Appendix B; also page 29 post.

ject. Each state may add to the federal law and impose additional requirements as to requisites of discovery, manner of location, designation of claims, and record of same, while the miners of each district may organize and adopt rules and regulations for the acquisition and enjoyment of mining privileges in the district, which, however, must conform to both the federal law and state enactments.

CHAPTER II.

WHO MAY LOCATE MINING CLAIMS.—CITIZENSHIP.

United States Law.

Section 2319, Revised Statutes.—“All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.”

Sec. 2321.—“Proof of citizenship, under this chapter, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge, or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any State or Territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.”

Washington Law.

Constitution, Art. II., Sec. 33.—“The ownership of lands by aliens, other than those who in good faith have declared their intention to become citizens of the United States, is prohibited in this state, except where acquired by inheritance, under mortgage or in good faith in the ordinary course of justice in the collection of debts; and all conveyances of lands hereafter made to any alien directly, or in trust for such alien, shall be void: Provided, That the provisions of this section shall not apply to lands containing valuable deposits of minerals, metals, iron, coal, or fire clay, and the necessary land for mills and machinery to be

used in the development thereof and the manufacture of the products therefrom. Every corporation, the majority of the capital stock of which is owned by aliens, shall be considered an alien for the purposes of this prohibition."

Secs. 4548, 4549, 4550, Bal. Code provide in substance that any alien who is not disqualified to become a citizen of the United States, shall have the right to acquire by purchase, devise or descent, and hold and convey in the usual manner, lands and any estate therein the same as if he were a citizen. The rights so conferred extend to the building and operating of railways, tramways and bridges, and to the ownership of lands in connection therewith, and all estates in lands attempted to be conveyed to aliens prior to the adoption of the state constitution are confirmed.

NOTE ON WASHINGTON LAW.—It will appear that the three sections of the code last cited, or at least the two first numbered, which were enacted prior to the adoption of the state constitution, are in a degree in conflict with the section of the constitution quoted above, and to that extent they will be held to be modified by the adoption of the constitution. The extent of this modification has never been judicially declared. But since under the laws of the United States an alien cannot obtain a patent to a mining claim, that much is settled. When the claim has once been patented, however, it becomes real property, and subject to disposition under the laws of the state, and as the constitutional inhibition does not apply to "lands containing valuable deposits of minerals," it is safe to state that aliens can acquire and hold and convey title to mines in Washington, though of course they cannot acquire directly by patent from the United States government.

Alaska Law.

(From Act of Congress, Approved May 14, 1898.)

"Sec. 15.—That native-born citizens of the Dominion of Canada shall be accorded in said district of Alaska the same mining rights and privileges accorded to citizens of the United States in British Columbia and the Northwest Territory by the laws of the Dominion of Canada or the local laws, rules, and regulations; but no greater rights shall be thus accorded than citizens of the United States or persons who have declared their intention to become such may enjoy in said district of Alaska; and the Secretary of the Interior shall from time to time promulgate and enforce rules and regulations to carry this provision into effect."

(From Land Office Regulations Issued June 8, 1898.)

"53. By the laws of the Dominion of Canada citizens of the United

States are, with all other persons over 18 years of age, permitted to lease mineral lands in British Columbia and the Northwest Territory upon the payment of a certain royalty to the general government, but the laws of that Dominion do not authorize the purchase of mineral lands in British Columbia or the Northwest Territory.

"54. The existing laws of the United States do not make any provision for the leasing of mineral lands in Alaska either to citizens of the United States or to others, but they do provide for and authorize the purchase of such lands in Alaska by our own citizens.

"55. Since this section accords to native-born citizens of Canada the same mining rights and privileges accorded to citizens of the United States in British Columbia and the Northwest Territory by the laws of the Dominion of Canada, and since under the laws of the Dominion of Canada the only mining rights and privileges accorded to citizens of the United States are those of leasing mineral lands upon the payment of a stated royalty, and since the laws of the United States do not accord to its own citizens the right or privilege of leasing mineral lands in Alaska, and since this section also provides that no greater rights shall be thus accorded to citizens of the Dominion of Canada 'than citizens of the United States of persons who have declared their intention to become such may enjoy in such district of Alaska,' it results that for the time being this section is inoperative."

As there is no other direct legislation upon the subject, and as this matter is not subject to any regulations by local rules of miners, the federal law will be the sole guide. The following remarks will apply generally to both Washington and Alaska:

CITIZENSHIP.—The right to acquire mineral land of the government is restricted to citizens of the United States, and to those who have declared their intention to become such. Under the term "citizens" are included females as well as males, associations and partnerships composed of citizens, and corporations organized under the laws of any state or of the United States. It has also been held that a minor is a citizen, and may locate and hold mining claims (1).

The restriction upon aliens applies as well to alien corporations, and an entry of mineral land for the benefit of such corporation cannot be made even by a citizen of the United States (2). An honorable discharge from the United States army is equivalent to a declaration of intention, and so also is the residence of an alien in the United States during the last three years of his minority. The declaration of a husband or father

(1) *Thompson vs. Spray*, 72 Cal. 533; 14 Pac. Rep. 182.

(2) *In Re. Capricorn Placer*, 10 L. D. 641: See also 11 L. D. 425.

is the declaration of the widow and minor children, if residents of the United States, and upon the subsequent death of such husband or father the widow and children may become naturalized by taking the oath required by law. The naturalization of the husband or father confers citizenship upon the wife and minor children, if residents of the United States.

RIGHTS OF ALIENS.—An alien who has not declared his intention to become a citizen of the United States can acquire by location no right to any of the mineral lands of the United States (3). But where an alien and a citizen unite in making a location the claim is valid as to the citizen, and in such case where the alien, conjointly with his co-locator, expends time, money and labor in developing the claim, he cannot be deprived of his share by his co-locator (4). Where a claim validly located by a citizen, is transferred to an alien, the latter may hold the same as against all the world except the United States (5).

Even where the alien is still in the possession of the claim he has located, no one has the right to eject him therefrom except the government of the United States, but any qualified locator may relocate the claim, if the relocation be made without force or violence (6).

NECESSITY OF COMPLYING WITH THE LAW.—There is no method of acquiring title to the mineral lands of the United States otherwise than by a compliance with the mining laws of the United States. Mere possession of the ground, no matter how complete or long continued, cannot inaugurate any title whatever. There is no such thing as adverse possession as against the United States (7).

CONCLUSIONS.—In his valuable work on "The Law Relating to Mines and Mineral Lands" Mr. Lindley states his conclusions upon the subject of this chapter to the effect that an alien may both locate and purchase a mining claim and also hold and dispose of the same until his right to do so is attacked in a direct proceeding against him by the United States (a citizen cannot do so). An alien cannot obtain a patent, though should he become naturalized after having made the location his right becomes complete and relates back to confirm the location and enables him to proceed to patent (8). In the same way a location made by an alien may be transferred by him to a citizen who may obtain a patent (9).

(3) *Lee vs. Justice Mng. Co.*, 29 Pac. Rep. (Colo.) 1022.

(4) *Billings vs. Aspen*, 51 Fed. Rep. 338.

(5) *Manuel vs. Wulff*, 152 U. S. 505; 14 Sup. Ct. Rep. 652.

(6) *Wilson vs. Triumph Co.*, 56 Pac. Rep. (Utah) 300.

(7) *Gleason vs. Martin*, 13 Nev. 455.

(8) *Lindley on Mines*, Sec. 234; *Manuel vs. Wulff*, *Supra*.

(9) *Lindley*, Sec. 233.

CHAPTER III.

DISCOVERY OF LODE CLAIMS.

United States Law.

Sec. 2320, Revised Statutes.—“No location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located.”

Washington Law.

Sec. 3152, Bal. Code.—“ * * * But no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claims located.”

Sec. 4, Act of 1899, Page 70.—“The term ‘lode’ as used in this act shall be construed to mean ledge, vein or deposit.”

DISCOVERY IS THE FOUNDATION OF TITLE.—In all district rules and customs of miners, and later in all laws of the United States and of the various states, discovery, followed by appropriation, has been recognized as the foundation of title to mines, and development the condition of retention (1). A location without a discovery is void, and the discovery must be upon the unappropriated public lands. A discovery upon ground already located will not support a location, not even as to such portion of the claim as may lie upon unappropriated land (2). And the discovery must be of a lode or vein; mere detached pieces of quartz are not sufficient to support a location (3).

ONE DISCOVERY, ONE LOCATION.—A discovery must be treated as an entirety, and the basis of but one location. It cannot support two locations having a common end line that bisects the discovery shaft (4).

WHAT IS A “VEIN” OR “LODE”?—The use of the terms “vein,” “lode” and “ledge” in the mining law of 1872 would seem to indicate that it was the object of Congress to avoid any limitation in the application of the law which a scientific definition of the term might impose. A “vein” is a seam or fissure in the earth’s crust, filled with quartz or other rock in place, carrying gold, silver or other valuable metal. It may be thin or thick, rich or poor, provided it contain even the smallest quantities of the metals named in the statute. A “lode” in the broadest sense of the term, is any formation which a miner would follow in the

(1) Justice Filed in *Jennison vs. Kirk*, 38 U. S. 453.

(2) *Lindley on Mines*, Sec. 337; *Little Pittsburg Cons. Co. vs. A. M. Co.*, 17 Fed. Rep. 67.

(3) *Jupiter Mng. Co. vs. Bodie C. Mng. Co.*, 11 Fed. Rep. 675.

(4) *McKinstry vs. Clark*, 4 Mont. 370; 1 Pac. Rep. 759.

expectation of finding ore. It is a zone or belt of mineralized rock lying within boundaries clearly separating it from the neighboring or country rock. A lode may and often does contain more than one vein (5).

WALLS.—There is nothing in the laws of either the United States, Washington or Alaska, which requires the actual discovery of a wall or walls to the vein. They are of importance only as indicating the boundaries of the lode, and with well-defined walls very slight evidence of the ore therein will be sufficient.

LOCATOR NEED NOT BE THE FIRST DISCOVERER.—It is not necessary that the locator should be the first discoverer, but the vein must be known to him and claimed by him (6).

SUBSTANCES HELD TO BE MINERAL, AND HENCE SUBJECT TO LOCATION.—The following have been held to be such by the Land Department:

Asphaltum, petroleum and the mineral hydrocarbons, borax, nitrate and carbonate of soda, sulphur and alum, kaolin, or china clay, mica, amber, gypsum, limestone, marble, diamonds, clay, phosphates, building stone and stone of special commercial value, coal, slate.

SALT LANDS are classified as mineral, but while these lands are held to be reserved from railway grants and formerly were entered under the mineral land laws, the Land Department will no longer permit them to be so acquired. They can be taken only as salines, and there is now no provision for the entry or sale by the United States of saline lands in either Washington or Alaska.

DEFINITION OF TERM "MINERAL" IN WASHINGTON.—While it has long been the settled doctrine both in England and elsewhere in this country, that the term "mineral" should be understood in its widest signification, yet the Supreme Court of Washington in *Wheeler vs. Smith* (5 Wash. 704; 32 Pac. Rep. 784) has sought to limit the meaning of the term to *metallic* substances or *ore*, and hence held that lands chiefly valuable for building stone could not be entered under the mineral land laws. As to this particular substance the ruling is now unimportant, for building stone lands may now be taken either as placers under the Act of Congress of August 14, 1892, or under the timber and stone act of June 3, 1878. But the decision may be important as an expression of the court upon the meaning that is to be given the term "mineral." The decision is, however, in conflict with that of all state

(5) *Eureka Case*, 4 Sawyer 302; *Iron Silver Mng. Co. vs. Cheesman*, 116 U. S. 529; *U. S. vs. Iron Silver Mng. Co.*, 128 U. S. 680. For a complete definition of the term "lode" and discussion of its requisites as to continuity, see *B. & B. Mng. Co. vs. Societe Anonyme Des Mines De Lexington*, 23 Mont. —; 53 Pac. Rep. 111.

(6) *Nevada Sierra Oil Co. vs. Home Oil Co.*, 98 Fed. Rep. 673.

courts which have passed upon the subject, as well as contrary to the rule in the Land Department, and is not likely to be followed as a precedent even in this state.

SCHOOL SECTIONS.—Mining claims upon the grant to the state for educational purposes. By section 20 of the "Act to Establish the Territorial Government of Washington Territory," approved March 2, 1853, it was provided "that when the lands in said territory shall be surveyed under the direction of the government of the United States preparatory to bringing the same into market or otherwise disposing thereof, sections numbered sixteen and thirty-six in each township in said territory shall be, and the same are hereby, reserved for the purpose of being applied to the common schools in said territory." This was re-enacted in the enabling act. No mineral lands were to pass by this grant. But by "mineral lands" was meant lands known to be such at the date of the grant. Upon the survey of the townships and designation of the sections therein the grant to the state is complete. It is made the duty, however, of the deputy surveyor in the field to note in the returns of the survey the character of the land, and if any such sections be returned as mineral the same do not pass to the state. Since the examination in the survey is necessarily very superficial it often follows that lands actually mineral are not so noted upon the returns to the survey and hence pass absolutely to the state, and its title will not thereafter be disturbed. But if any such lands be designated as mineral, they are thus reserved from such grant. The return is *prima facie* evidence of their mineral character and thereafter the same are open to exploration and acquisition under the mining laws (?).

Alaska.

There is no special legislation concerning the subject of discovery in Alaska, and local mining districts are not empowered to regulate the same. The foregoing remarks of course apply to Alaska as well as to Washington.

(7) *Hermocilla vs. Hubbell*, 59 Cal. 5; 26 Pac. Rep. 611. As to lease of state mineral lands in Washington, see Appendix B.

CHAPTER IV.

LOCATION OF LODE CLAIMS.

United States Law.

Sec. 2320, Revised Statutes.—“Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations and laws in force at the date of their location. A mining claim located after the tenth day of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing May 10, 1872, render such limitation necessary. The end lines of each claim shall be parallel to each other.”

Sec. 2324.—“The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the state or territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced,” etc.

Washington Law.

Sec. 3151, Bal. Code.—“All mining claims upon veins or lodes of quartz or other rock in place, bearing gold, silver, or other valuable mineral deposits heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of such location.”

Sec. 3152.—“A mining claim located upon any vein or lode of quartz or other rock in place, bearing gold, silver or other valuable mineral deposits after the approval of this act by the governor, whether located by one or more persons, may equal, but shall not exceed, fifteen hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claims located. No claims shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any

claims be limited by any mining regulation to less than fifty feet of surface on each side of the middle of such vein or lode, at the surface, excepting where adverse rights, existing at the date of the approval of this act, shall make such limitation necessary. The end lines of such claim shall be parallel to each other."

Sec. 2, Act of 1899, Page 69.—"Before filing such notice for record, the discoverer shall locate his claim by first sinking a discovery shaft upon the lode, to the depth of ten (10) feet from the lowest part of the rim of such shaft at the surface, and shall post at the discovery at the time of discovery a notice containing the name of the lode, the name of the locator or locators, and the date of discovery, and shall mark the surface boundaries of the claim by placing substantial posts or stone monuments bearing the name of the lode and date of location; one post or monument must appear at each corner of such claim; such posts or monuments must be not less than three (3) feet high; if posts are used they shall be not less than four inches in diameter and shall be set in the ground in a substantial manner. If any such claim be located on ground that is covered wholly or in part with brush or trees, such brush shall be cut and trees be marked or blazed along the lines of such claim to indicate the location of such lines."

Sec. 3.—"Any open cut or tunnel having a length of ten (10) feet, which shall cut a lode at the depth of ten (10) feet below the surface, shall hold such lode the same as if a discovery shaft were sunk thereon, and shall be equivalent thereto."

Sec. 9.—"The provision herein, relating to discovery shafts, shall not apply to any mining location west of the summit of the Cascade mountains."

FORMS.—For a form of Notice of Location for posting on the claim recommended for use in Washington, see Form No. 1, Appendix A, and for a form for record see Form No. 2, both of which meet fully the requirements of the law of the state, and if carefully followed by locators will lead to a better system of records of mining titles.

LOCATION INITIATES TITLE.—The act of location is the posting of notice. Thereby the title of the locator is initiated and he serves notice upon all the world of his discovery and claim. He thereupon becomes entitled to the statutory time (ninety days in Washington, and such time as local rules may provide in Alaska), in which to explore his vein, mark his boundaries and record his location. The federal and state legislation on this subject may be amplified in any district by local rules.

LOCATORS.—The names, but not necessarily the signatures of the

locators are required to be stated in the posted notice. An agent may locate for his principal, and the latter may be either a person or a corporation. The claim located by an agent, even if the location be made in his own name, will be the property of the principal (1). The same is true of a partnership (2). The agent or partner so locating takes and holds the title in trust.

POWERS OF ATTORNEY, and the location of claims by that means, are permitted by law. Nor is there any provision in the recently enacted Carter Alaska Code to the contrary.

DIMENSIONS OF LOCATION.—The location may equal but shall not exceed fifteen hundred feet in length along the course of the vein, and, in the absence of miners' regulations limiting the width, may include surface ground three hundred feet wide on either side of the middle of the vein. The posted notice should designate the portions of the 1500 feet of length claimed on either side of the point of discovery, but in a case under a similar law where the notice failed to do this it was held that the claimant might hold 750 feet along the vein each way from point of discovery (3).

NOTICES LIBERALLY CONSTRUED.—While the prudent locator will be careful to have his location notice exactly right, yet it is true that courts are inclined to be liberal in their construction of the notices required by state law. Mistakes in directions and distances often occur, and more ground is often included within the location than the law allows, but such mistakes do not invalidate the location. Positive exactness in such matters should not be expected or required (4).

FLOATING OR SHIFTING OF THE CLAIM.—The posting of the notice holds the vein to the extent claimed for the period of ninety days. During this ninety day period, the locator may swing his claim in any direction required to include his vein, and all persons entering the territory which may thus be located for the purpose of making explorations on their own account do so at their own peril. The law fully protects the rights of the first locator during the period allowed him for perfecting his location. The first locator must act in good faith, however, and he will not be justified in swinging his claim for the purpose of including the valuable discovery of a neighbor. When the corners are once established all swinging of the claim must cease (5).

(1) *Raymond vs. Johnson*, 17 Wash, 232, 49 Pac. Rep. 492; *Book vs. Justice Mng. Co.*, 58 Fed Rep. 106; *Dunlap vs. Pattison*, 42 Pac. Rep. 504.

(2) *Hirbour vs. Reading*, 3 Mont. 15.

(3) *Erhardt vs. Boaro*, 113 U. S. 527.

(4) *Richmond Mng. Co. vs. Rose*, 114 U. S. 576; *Book vs. Justice Co. Supra.*

(5) *Gleason vs. Martin White Mng. Co.*, 13 Nev. 488; *Sanders vs. Noble*, 55 Pac. Rep. 1037.

EXPLORATION OR DEVELOPMENT WORK.—The object of requiring development work of the locator at the time of the location is not only to prevent merely speculative locations, and to insure the good faith of the locator, but also to compel the locator at the outset to disclose the lode he claims and to reveal its course or strike. The work must be performed within ninety days after the notice of location is posted on the claim. If, however, a greater length of time than this is consumed in performing the work, and adverse rights of third parties have not intervened before its completion, the rights of the locator would not be forfeited because of the delay.

MARKING BOUNDARIES.—The only requirement of the law of the United States in regard to the manner of locating a mining claim is that "the location must be distinctly marked on the ground so that its boundaries can be readily traced." The location is never complete until the boundaries are so marked, but if the work be done within the ninety days' allotted time, it will relate back to the date of the location, and thereafter will be deemed to have been done as of that date. The law of Washington as just quoted (Secs. 2-3, Act of 1899) is very explicit in its requirements and should be carefully followed (6). "Posts from five to seven inches in diameter, firmly planted in the ground at the corners and ends of a mining claim, and standing not less than five feet above ground, are permanent monuments, within the meaning of the Revised Statutes of the United States, section 2324, requiring all records of such claims to contain a description of the claim by reference to some natural object or permanent monument as will identify the claim, and a recorded notice, which, in addition to a reference to such posts, also gives the general direction and distance of the claim from a lake and a river," has been recently held a sufficient compliance with the law (7). Note carefully that the law of Washington requires that the "name of the lode and date of location" shall appear on the post or monument at each corner of the claim, and such requirements are held to be mandatory (6).

CORNER MONUMENTS ON GROUND ALREADY APPROPRIATED.—There is no provision of law forbidding corner monuments to be established on ground already appropriated and belonging to third parties. In locating contiguous claims this often occurs, and the validity of such monuments is in no way impaired thereby (8).

EFFECT OF THE DESTRUCTION OF MONUMENTS.—The locator, having once established the monuments required by law, is not

(6) *Purdum vs. Laddin*, 59 Pac. Rep. (Mont.) 153.

(7) *Credo Mng. Co. vs. Highland M. & M. Co.*, 95 Fed Rep. 911.

(8) *Del Monte M. Co. vs. Last Chance Co.*, 171 U. S. 55.

The object of the location is to insure the location at the outset to be like. The work of location is more than this is of third parties the locator would

of the law of mining claim is found so that its complete until within the ninety day location, and date. The law is very explicit in Posts from five at the corners five feet above of the Revised records of such to some natural and a recorded also gives the and a river," has w (7). Note me of the lode monument at each mandatory (6).

APPROPRIATION.—The monuments to giving to third and the value. MONUMENTS.—The law, is not

charged with the duty of protecting them from destruction. His right cannot be divested by the obliteration or removal of the corner posts without his fault (9).

PARALLEL END LINES.—The end lines, that is, those lines which are crossed by the vein, should be parallel. If not parallel, the location is not thereby void, but the effect is the loss to the owner of the right to follow the vein on its dip beyond the side lines (10). Hence a claim located in the form of a triangle has no extralateral rights (11). But when the claim is surveyed for patent the end lines can be so laid off as to be parallel, and this should then be done, even if necessary to relinquish a portion of the ground covered originally.

LOCATION INSUFFICIENTLY MARKED may be cured by new markings, if before adverse rights have intervened. (See Re-Location and Amended Location, page 54.)

WEST OF SUMMIT OF CASCADE MOUNTAINS IN WASHINGTON no discovery shaft is required by the express exception contained in Sec. 9 of the Act of 1899. The preliminary exploration work required in the act is by this section limited to Eastern Washington. The validity of this exception will perhaps be questioned. It can be safely stated, however, that as the law is general in its operation and only the exception is special, the objection can be raised only to that section. Should the court ultimately hold that the legislature cannot so legislate, the act itself will not be affected, but only that section and the exception thereby attempted will be declared void. In other words, the effect will be to require a full compliance with the entire act throughout the state. While we know of no serious objection to the power of the legislature to make the exception, yet we believe that the locator of a valuable mine will avoid litigation at least by sinking the discovery shaft or cut as required by the act.

Alaska Law.

There is no special requirement as to the manner of location of mining claims in Alaska, and therefore such of the foregoing remarks as apply to the statutory provisions of Washington will have no application in that district. The United States law, however, states the maximum size of claims and requires discovery, appropriation, marking of corners, parallel end lines, and states generally what the record of mining loca-

(9) *Montana Co. vs. Clark*, 42 Fed. Rep. 626.

(10) *Lindley on Mines*, Sec. 365.

(11) *Montana Co. vs. Clark*, *Supra*; *Doe vs. Waterloo Mng. Co.*, 54 Fed. Rep.

tions must show. These conditions must be carefully followed, and beyond this the matter is left for such further requirements as may be imposed by the rules and regulations adopted in the various mining districts. In this connection we quote from Land Office Regulations of June 24th, 1899:

"6. By the foregoing it will be perceived that no lode claim located after the 10th day of May, 1872, can exceed a parallelogram fifteen hundred feet in length by six hundred feet in width, but whether surface ground of that width can be taken depends upon the local regulations or state or territorial laws in force in the several mining districts; and that no such local regulations or state or territorial laws shall limit a vein or lode claim to less than fifteen hundred feet along the course thereof, whether the location is made by one or more persons, nor can surface rights be limited to less than fifty feet in width unless adverse claims, existing on the 10th day of May, 1872, render such lateral limitation necessary.

"9. Locators cannot exercise too much care in defining their locations at the outset, inasmuch as the law requires that all records of mining locations made subsequent to May 10, 1872, shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located, by reference to some natural object or permanent monument, as will identify the claim.

"10. No lode claim shall be located until after the discovery of a vein or lode within the limits of the claim, the object of which provision is evidently to prevent the appropriation of presumed mineral ground for speculative purposes, to the exclusion of bona fide prospectors, before sufficient work has been done to determine whether a vein or lode really exists.

"11. The claimant should, therefore, prior to locating his claim, unless the vein can be traced upon the surface, sink a shaft or run a tunnel or drift to a sufficient depth therein to discover and develop a mineral-bearing vein, lode, or crevice; should determine, if possible, the general course of such vein in either direction from the point of discovery, by which direction he will be governed in marking the boundaries of his claim on the surface. His location notice should give the course and distance as nearly as practicable from the discovery shaft on the claim to some permanent, well-known points or objects, such, for instance, as stone monuments, blazed trees, the confluence of streams, point of intersection of well-known gulches, ravines or roads, prominent buttes, hills, etc., which may be in the immediate vicinity, and which will serve to perpetuate and fix the locus of the claim and render it susceptible of

identification from the description thereof given in the record of locations in the district, and should be duly recorded.

"12. In addition to the foregoing data, the claimant should state the names of adjoining claims, or, if none adjoin, the relative positions of the nearest claims; should drive a post or erect a monument of stones at each corner of his surface ground, and at the point of discovery or discovery shaft should fix a post, stake or board, upon which should be designated the name of the lode, the name or names of the locators, the number of feet claimed, and in which direction from the point of discovery; it being essential that the location notice filed for record, in addition to the foregoing description, should state whether the entire claim of fifteen hundred feet is taken on one side of the point of discovery, or whether it is partly upon one and partly upon the other side thereof, and in the latter case, how many feet are claimed upon each side of such discovery point.

"13. The location notice must be filed for record in all respects as required by the state or territorial laws and local rules and regulations, if there be any."

FORM FOR LODE LOCATION NOTICE IN ALASKA is submitted in Form No. 3, Appendix A. Some matters are therein stated which are not expressly required by law, but the prudent locator will omit to state nothing that is therein suggested.

CHAPTER V.

RECORD OF LODE LOCATIONS.

United States Law.

Sec. 2324, Revised Statutes.— * * * "All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim."

Washington Law.

Sec. 1, Act of 1899, Page 69.—"The discoverer of a lode shall within ninety (90) days from the date of discovery, record in the office of the auditor of the county in which such lode is found, a notice containing the name or names of the locators, the date of the location, the number of feet in length claimed on each side of the discovery, the general course

of the lode and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim."

FORM NO. 2 in Appendix A meets the requirements of the foregoing law and is submitted as the proper form of notice of location for record in Washington.

FORMER WASHINGTON LAW.—Secs. 3155-7 of Ballinger's Annotated Codes and Statutes of Washington, in force prior to 1899, empowered mining districts to elect a Recorder, enumerated his duties, and provided for the record of mining locations and transfers with such officer, and at the same time provided for the record of such instruments in the office of the County Auditor within thirty days after the execution of the same. The sections are doubtless repealed by the Act of 1899, and mining districts in Washington are therefore unaffected by any state legislation. Indeed the state legislation has left no necessity for their organization.

Alaska Law.

(From the Carter Act Recently Passed by Congress.)

Sec. 15, Title I., provides that the Clerk of the District Court of Alaska for each division, who shall be ex-officio Recorder, shall record: * * *

"Seventh—Notices and declaration of water rights;

* * * * *

"Ninth—Affidavits of annual work done on mining claims;

"Tenth—Notices of mining location and declaratory statements;

"Eleventh—Such other writings as are required or permitted by law to be recorded, including the liens of mechanics, laborers, and others: *Provided*, Notices of location of mining claims shall be filed for record within ninety days from the date of the discovery of the claim described in the notice, and all instruments shall be recorded in the recording district in which the property or subject matter affected by the instrument is situated, and where the property or subject matter is not situated in any established recording district the instrument affecting the same shall be recorded in the office of the clerk of the division of the court having supervision over the recording division in which such property or subject matter is situated."

Sec. 26 of the same act extends the General Mining Laws of the United States to Alaska. That section is copied in full in Chapter VII., page 29 post.

FORM FOR LODE LOCATION NOTICE for record in Alaska is the same as that required to be posted on the claim, and Form No. 3,

Appendix A, is submitted as containing all the necessary requirements. Care must always be taken, however, to ascertain and observe the local rules, if in an organized mining district in Alaska.

THE PURPOSE OF THE RECORDED LOCATION NOTICE is to establish a permanent record of the location. It should conform to the statute and should show the fulfillment of every requirement of the law. When properly made and recorded it furnishes constructive notice to the world of the facts which it recites.

One of the most important requisites of such a statement is that it shall contain such a description of the claim, located by reference to some natural object or permanent monument as will identify the claim. If the situation of the claim is so indefinitely or inaccurately described that the claim cannot be found by means of it, then the record affords no notice to any one, and any person not having actual knowledge of the claim can relocate the ground and hold the same by a good title. If such relocater, however, has actual knowledge of the prior location he cannot take advantage of the defective record. He has such knowledge if the claim be in the actual possession of the prior locator (1)

NATURAL OBJECTS AND PERMANENT MONUMENTS.—The natural object may consist of any fixed natural object in the immediate vicinity, such as a prominent boulder of unusual size or shape, the confluence of streams, the point of intersection of well known gulches, ravines, or roads, prominent buttes, hills, etc. The permanent monument may be a conspicuous stone monument constructed for the purpose, a prominent post or stake firmly planted in the ground, well known shafts or tunnels on neighboring claims, an adjoining claim whose location is generally known, or, what is best of all, a corner of the United States land survey. It is no objection to a permanent monument that it is on the claim itself. In each case the question whether the object chosen is such a natural object or permanent monument as serves to identify the claim is a question of fact for the jury.

The distances from the discovery shaft or other initial point on the claim to two or more such natural objects or permanent monuments should be given with as great accuracy as possible. Such objects or monuments as lie in directions nearly at a right angle to each other from the starting point should be chosen. This is called "tying the claim."

DESCRIPTION OF DEVELOPMENT WORK.—There is nothing in the law of Washington which expressly requires the locator to state in his recorded notice of location the dimensions or location of the dis-

(1) *Lebanon Co. vs. Con. Rep. Co.*, 6 Colo. 379.

covery shaft or cut. But this work is required to be done and the corners properly marked "before filing such notice for record," and the prudent locator will incorporate a statement of the same in his recorded notice as in Form No. 2, Appendix A.

VERIFICATION.—The laws of Washington, unlike those of other mining states, do not require that a notice of location be verified. Hence the affidavit added to Form No. 2 is not absolutely necessary. Section 6 of the Act of 1899, however, provides for the record of an affidavit showing the "performance of annual labor or the making of improvements upon any quartz, or lode mining claim," and that such recorded affidavit or a certified copy thereof shall be received as evidence by the courts. Hence it would seem that the recorded notice of location should show this preliminary exploration work and its allegations be verified by oath. The location notice, properly made and recorded, is *prima facie* evidence of a discovery (2), but it must contain every requirement of the statute, and upon this point the law is mandatory (3).

COMPUTATION OF TIME.—The time, within which any act is required by the law of Washington to be done, is computed by excluding the first day and including the last, unless the last is a holiday, and then it also is excluded, and the act can be performed on the day following. Holidays include every Sunday, January 1, February 12 and 22, May 30, July 4, the first Monday of September, Election day, Thanksgiving Day and December 25th (4).

CHAPTER VI.

PLACERS.

United States Law.

Sec. 2329, Rev. Stats.—"Claims usually called 'placers,' including all forms of deposits, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands."

Act of August 4, 1892.—"Any person authorized to enter lands

(2) Lindley on Mines, Sec. 392.

(3) *Purdum vs. Laddin*, 59 Pac. Rep. (Mont.) 153.

(4) Secs. 4709-11, 4790, 4896, Bal. Code.

under the mining laws of the United States may enter lands that are chiefly valuable for building stone under the provisions of the law in relation to placer mineral claims: Provided, That lands reserved for the benefit of the public schools or donated to any state shall not be subject to entry under this act." (27 Stats. L. 348.)

Sec. 2330.—"Legal subdivisions of forty acres may be subdivided into ten-acre tracts; and two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; but no location of a placer claim, made after the ninth day of July, eighteen hundred and seventy, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any bona fide pre-emption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any bona fide settler to any purchaser.

Sec. 2331.—"Where placer claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer mining claims located after the tenth day of May, eighteen hundred and seventy-two shall conform as near as practicable with the United States system of public land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer claims can not be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands. * * * "

Washington Law.

Sec. 10, Act of 1899, p. 71.—"The discoverer of placers or other forms of deposit subject to location and appropriation under mining laws applicable to placers shall locate his claim in the following manner:

"First.—He must immediately post in a conspicuous place at the point of discovery thereon, a notice or certificate of location thereof, containing (a) the name of the claim; (b) the name of the locator or locators; (c) the date of the discovery and posting of the notice hereinbefore provided for, which shall be considered as the date of the location; (d) a description of the claim by reference to legal subdivisions of sections, if the location is made in conformity with the public surveys, otherwise, a description with reference to some natural object or permanent monument as will identify the claim; and where such claim is located by legal subdivisions of the public surveys, such location shall,

notwithstanding that fact, be marked by the locator upon the ground the same as other locations.

"Second.—Within thirty (30) days from the date of such discovery, he must record such notice or certificate of location in the office of the auditor of the county in which such discovery is made, and so distinctly mark his location on the ground that its boundaries may be readily traced.

"Third.—Within sixty (60) days from the date of the discovery, the discoverer shall perform labor upon such location or claim in developing the same to an amount which shall be equivalent in the aggregate to at least ten (10) dollars' worth of such labor for each twenty acres, or fractional part thereof contained in such location or claim.

"Fourth.—Such locator shall upon the performance of such labor, file with the auditor of the county an affidavit showing such performance and generally the nature and kind of work so done."

Sec. 11.—"The affidavit provided for in the last section, and the aforesaid placer notice or certificate of location when filed for record, shall be prima facie evidence of the facts therein recited. A copy of such certificate, notice or affidavit certified by the county auditor shall be admitted in evidence in all actions or proceeding with the same effect as the original and the provisions of sections six and seven of this act shall apply to placer claims as well as lode claims."

Alaska Law.

The discussion of the law as to placers upon the beach and tide lands in the Nome region of Alaska is reserved for the next chapter. The following section relates to records of mining claims generally and is from the Carter act to provide a civil government for Alaska, just passed by Congress.

Sec. 15. Title I., provides that the Clerk of the District Court of Alaska for each division shall be ex-officio Recorder and shall record: * * *

"Seventh—Notices and declaration of water rights;

* * * * *

"Ninth—Affidavits of annual work done on mining claims;

"Tenth—Notices of mining location and declaratory statements;

"Eleventh—Such other writings as are required or permitted by law to be recorded, including the liens of mechanics, laborers, and others: Provided, Notices of location of mining claims shall be filed for record within ninety days from the date of the discovery of the claim described in the notice, and all instruments shall be recorded in the recording

district in which the property or subject matter affected by the instrument is situated, and where the property or subject matter is not situated in any established recording district the instrument affecting the same shall be recorded in the office of the clerk of the division of the court having supervision over the recording division in which such property or subject matter is situated."

Sec. 26 of the same act extends the General Mining Laws of the United States to Alaska. That section is copied in full in the next chapter, page 29' post. The mining laws of the United States were first extended to Alaska by the Act of May 14, 1884. See Appendix B.

FORMS.—A form of Notice of Location of Placers for both posting on the claim and record, recommended for use both in Washington and Alaska, is submitted in Form No. 4, Appendix A.

WHAT MAY BE LOCATED AS A PLACER MINING CLAIM.—Alluvial and other deposits, not rock in place, bearing gold, copper and other valuable metals or precious stones, and also deposits of kaolin, borax, soda, etc., may be located as placer claims.

BUILDING STONE may be located under the Placer Mining Laws by special authority of the Act of August 4, 1892.

CONFORMING TO PUBLIC SURVEY.—While section 2329 of the Revised Statutes prescribes that "where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands," yet it can hardly be the intention of this provision to compel the claimant to include non-mineral land in his location. It is the practice of the land department to allow the patent of placer claims that do not conform to the legal subdivisions of the public lands, where it is shown that such claims include all portions valuable for mining purposes.

TUNDRA CLAIMS may be located as placers. And such claims may be extended downward on the beach to the line of ordinary high tide. See next chapter.

CREEKS AND THE BOTTOMS OF NON-NAVIGABLE STREAMS may be located as placers. Such claims may be made to conform to the course of the stream. The manner of making such locations in Alaska at least is governed almost entirely by the local rules of each district, and the prospector, if in an organized mining district, should fully inform himself as to all local rules before making a location.

IN ALASKA the almost universal custom is to require location of placer claims in the form of a rectangle, 660 by 1320 feet maximum size.

POWERS OF ATTORNEY, and the location of claims by the same,

are not prohibited by the recently passed Carter Act, or otherwise, unless by local rules.

MANNER OF LOCATING.—There should be a discovery upon each twenty-acre claim. It is true that the Supreme Court of Montana has held that where an association of persons jointly locate a tract of 160 acres as a placer claim, one discovery is sufficient, but the Land Department has ruled that a separate discovery is necessary upon each twenty-acre tract. While this ruling holds it is necessary it should be complied with in order to secure a patent.

When not located by legal subdivisions, the location notice upon a placer claim should state the dimensions of the surface claim, and the number of feet claimed in each direction from discovery.

In the case of a placer claim the notice of location should give the area in acres or superficial feet. It should describe the location upon the claim of the discovery shaft or other improvement, and give its dimensions. This can be done by giving the distance and direction from the discovery to one of the corners of the claim. If the claim is upon surveyed land, the legal subdivisions covered by the location should be given. If upon unsurveyed land, the notice should so state.

CHAPTER VII.

MINING RIGHTS UPON THE BEACH AND TIDE LANDS IN PORTIONS OF ALASKA, INCLUDING CAPE NOME.

THE UNITED STATES LAW is silent upon the subject of mining rights on lands bordering the navigable waters. These lands have been variously designated as tide lands, beach lands and shore lands. More accurately defined, the beach in the Nome or Bering Sea region of Alaska is all the ground that lies between the tundra and the line of low tide, while of course tide lands are only such portions of the beach as are alternately covered and exposed by the tide. By common use the term beach land has been extended to include all the ocean bottom out to the three mile limit. As a general doctrine of law it may be stated that tide lands (lands below ordinary high tide) belong to all the people, and are not subject to location or acquisition under the mining laws. Indeed the Secretary of the Interior has so held in the Logan case in an opinion

otherwise, unless

discovery upon
Court of Montana
ate a tract of 160
the Land Depart-
upon each twenty-
ould be complied

on notice upon a
e claim, and the
y.

h should give the
he location upon
ent, and give its
ce and direction

If the claim is
he location should
so state.

IN PORTIONS OF

subject of mining
lands have been
ore lands. More
g Sea region of
d the line of low
the beach as are
on use the term
ottom out to the
e stated that tide
people, and are
g laws. Indeed
se in an opinion

dated January 3, 1900 (1). This doctrine renders it impossible to acquire title, or even possessory rights for mining purposes on such tide lands, and leaves the matter subject to regulation by local rules in each district. We now quote the special provision to regulate this subject incorporated into the Carter Act to provide a civil government for Alaska, just passed by Congress:

Alaska Law.

Sec. 26, Title I. "The laws of the United States relating to mining claims, mineral locations, and rights incident thereto are hereby extended to the District of Alaska: *Provided*, That subject only to such general limitations as may be necessary to exempt navigation from artificial obstructions, all land and shoal water between low and mean high tide on the shores, bays and inlets of Bering Sea, within the jurisdiction of the States, shall be subject to exploration and mining for gold and other precious metals by citizens of the United States, or persons who have legally declared their intention to become such, under such reasonable rules and regulations as the miners in organized mining districts may have heretofore made or may hereafter make governing the temporary possession thereof for exploration and mining purposes until otherwise provided by law: *Provided further*, That the rules and regulations established by the miners shall not be in conflict with the mining laws of the United States; and no exclusive permit shall be granted by the Secretary of War authorizing any person or persons, corporation or company to excavate or mine under any of said waters below low tide, and if such exclusive permit has been granted it is hereby revoked and declared null and void; but citizens of the United States or persons who have legally declared their intention to become such shall have the right to dredge and mine for gold and other precious metals in said water below low tide, subject to such general rules and regulations as the Secretary of War may prescribe for the preservation of order and the protection of the interests of commerce. Such rules and regulations shall not, however, deprive miners on the beach of the right hereby given to dump tailings into or pump from the sea opposite their claims, except where such dumping would actually obstruct navigation; and the reservation of a roadway sixty feet wide, under the tenth section of the Act of May 14th, 1898, entitled 'An Act extending the homestead laws and providing for right-of-way for railroads in the District of Alaska, and for other purposes,' shall not apply to mineral lands or town-sites."

THE SIXTY-FOOT ROADWAY, to which reference is made in the

(1) See 29 L. D. 395, citing *Shively vs. Bowlby*, 152 U. S. 1-53.

section just quoted, is a strip sixty feet in width along the shore line of navigable waters in Alaska reserved by the Act of Congress of May 14, 1898, for the use of the public as a highway. It was provided by that act that this strip should not be conveyed to any person, and that no rights whatever could be acquired thereon, but the section just quoted provides that this reservation shall be held to have no application to mineral lands.

TIDE LANDS, accurately defined, are lands alternately covered and exposed by the tide. This would naturally include in the designation all lands from extreme high tide to extreme low tide. But in the section quoted the words "mean high tide" are used. This of course means the same as ordinary high tide, and the line of ordinary high tide is fixed by nature itself. The action of the government in meandering such line will not actually establish it, but will merely indicate where the laws of nature have already established it. This line will be the lower line of ground subject to entry under the placer or other mining laws, and the upper line of ground which may be operated as beach or tide lands under local rules.

PERMITS BY THE SECRETARY OF WAR.—Under this section the Secretary of War may grant permits to mine upon the beach below low tide. The War Department claimed (and doubtless had) the right to grant such permits even before the passage of the act. As the permits so granted can extend to only such portions of the beach as are "below low tide," it is not at all likely that they will in any manner conflict with mining operations conducted under authority of the rules and regulations of the mining districts, and if so, the permits will doubtless be issued subject to such local rules.

LOCAL RULES must be depended upon to provide the methods by which rights may be acquired to mine upon the beach below the line of mean high tide. The questions as to whether exclusive rights shall be granted to any person or persons to mine upon any particular portion of the tide lands, and if so, the size of such claims and the method by which the same may be acquired and held, are all left for regulation by the miners of each district, whose natural rights and authority to make such rules and regulations are recognized and extended by the section quoted. Of course local rules may provide for mining rights and privileges under water even below the line of low tide, subject to such rules as the Secretary of War may prescribe, for it is provided in the act that permits granted by the War Department shall not be exclusive. In short, local rules alone will govern mining rights and operations on the tide lands proper, extending from the line of mean high tide to low tide. Above

the line of high tide the local rules will govern, subject to the General Mining Laws of the United States and Alaska, while below low tide, local rules may also regulate mining rights, but subject however to such permits and regulations as may be issued by the Secretary of War.

POWERS OF ATTORNEY, and the use of the same in locating mining claims, are not prohibited by the Carter Act or by any laws of the United States or Alaska, but as local rules will govern entirely as to mining rights upon tide lands, a prohibition can be enacted by the miners themselves in each district. In the same manner will the number and size of claims, amount of work required, etc., be regulated.

IN CONCLUSION, it may be stated that all mineral lands down to the line of mean high tide on the shores of Bering Sea in Alaska may be located and held under the general mining laws, but that all tide lands are reserved from the operation of such laws, and mining operations thereon can be conducted only in accordance with such local rules and regulations as may be adopted by the miners in each district; that tide lands include all between low tide and mean high tide; that mining operations below the line of low tide may be regulated, by local rules, subject however to such permits and regulations as may be issued by the Secretary of War, which permits, however, shall in no case be exclusive.

CHAPTER VIII.

MINING DISTRICTS AND LOCAL RULES.

United States Law.

Sec. 2319, Rev. Stats.—“All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, * * * by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.”

Sec. 2324.—“The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the state or territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims here-

after made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim," etc.

Washington Law.

Sec. 3155 of Bal. Code provides that the miners of each mining district may elect a recorder, and enumerates his duties with reference to the keeping of records.

Sec. 3156 provides that such recorder shall hold office for one year; shall file an oath of office with the county auditor; shall be a certifying officer and may make certified copies of records in his possession; shall receive the same fees as the county auditor for similar work, and should his office become vacant, this section provides for the transmission of all records to the county auditor.

Sec. 3157 provides that "all location notices, bonds, assignments and transfers of mining claims shall be recorded in the office of the county auditor of the county where the same is situated, within thirty days after the execution thereof."

We now quote from the Act of 1899, pp. 72-73:

Sec.12.—"All locations of quartz or placer formations or deposits hereafter made shall conform to the requirements of this act in so far as the same are respectively applicable thereto."

Sec. 13.—"Any mining district organized in the state of Washington in accordance with the laws of the United States, shall have power to make rules and regulations for such mining district, providing such rules and regulations do not conflict with the laws of the state of Washington or of the United States.

Sec. 14.—"Any mining district shall have the power to make road building to mining claims within such district applicable as assessment work, or improvement upon such claims: Provided, That rules pertaining to such road building shall be made only at a public meeting of the miners of such district regularly called by the mining recorder of such district; Provided further, That such meeting shall be attended by at least twelve (12) property holders of such district, and that no such rule can be made without the assent of the majority of the property holders of such district, who are present at such meeting. Such meeting to designate where, when and how such road work shall be done, and shall designate some one of their number who shall superintend such road building or construction, and who shall receipt for such labor to the performer thereof, such receipts to be filed with the county auditor

of the county in which such work is performed by the holder or holders of such receipts, and shall be received as prima facie evidence of labor performed as annual assessment work upon such claim or claims, as may be designated by an affidavit or oath of labor as provided for in section six (6) of this act: Provided, That nothing in this act can be construed as being mandatory upon any owner or holder of mining property to perform labor upon any such road."

COMMENT ON WASHINGTON LAW.—Sections 3155-7 of Balingier's Code, cited above, have doubtless been repealed by the act of 1899. The United States Mining Law has been so supplemented by state legislation as to leave little necessity for rules of miners. In the states it seldom happens that the miners of any district now organize, and where such organization has been effected and the rules once adopted allowed to fall into disregard, the same thereby become void (1).

Alaska Law.

The Carter Alaska Act, just passed by Congress, provides three District Judges for Alaska, to reside at Juneau, Nome and Eagle City. Section 13 of Title I. of the Act provides that these judges shall divide the entire district of Alaska into three recording divisions. A clerk of the Court is provided for each division, who shall be ex-officio recorder for that division. This section then provides for the further subdivision of the recording divisions into recording districts and the appointment of a Court Commissioner for each, who shall be ex-officio recorder for the district. We now quote the latter portion of this rather lengthy section:

Sec. 13.—" * * * At any regular or special term an order may be made by the Court establishing one or more recording districts within the recording division under the supervision of such division of the Court, and defining the boundaries thereof by reference to natural objects and permanent landmarks or monuments, in such manner that the boundaries thereof can be readily determined.

The order establishing a recording district shall designate a Commissioner to be ex-officio recorder thereof, and shall also designate the place where the Commissioner shall keep his recording office within the recording district: *Provided*, The Clerk of the Court shall be ex-officio recorder of all that portion of the recording division under the supervision of his division of the Court not embraced within the limits of a recording district established, bounded and described therein as authorized by this act, and when any part of the division for which a clerk has been recording shall be embraced in a recording district, such clerk shall

(1) North Noonday M. Co. vs. Orient M. Co., 1 Fed. Rep. 522; Jupiter M. Co. vs. Brodie Con. M. Co., 11 Fed. Rep. 673.

transcribe that portion of his records appertaining to such district and deliver the same to the Commissioner designated as recorder thereof.

"Whenever it appears to the satisfaction of the Court that the public interests demand, or that the convenience of the people require, the Court may change or modify the boundaries or may discontinue a recording district or change the location of the recording office, or remove the Commissioner acting as ex-officio recorder, and appoint another Commissioner to fill the office."

Sec. 16, Same Title.—" * * * Miners in any organized mining district may make rules and regulations governing the recording of notices of location of mining claims, water rights, flumes and ditches, mill sites and affidavits of labor, not in conflict with this Act or the general laws of the United States; and nothing in this Act shall be construed so as to prevent the miners in any regularly organized mining district not within any recording district established by the Court from electing their own mining recorder to act as such until a recorder therefor is appointed by the Court: *Provided further*, All records heretofore regularly made by the United States Commissioner at Dyea, Skagway, and the recorder at Douglas City, not in conflict with any records regularly made with the United States Commissioner at Juneau, are hereby legalized, and all records heretofore made in any regularly organized mining district are hereby validated and made public records, and the same shall be delivered to the Recorder for the recording district including such mining district within six months from the passage of this act."

THE POWERS OF MINING DISTRICTS are limited to reasonable regulations for the manner of acquiring and holding mining rights and privileges. No rule of the district can in any manner contravene or modify any law of the United States or of the state or district. Additional requirements can be imposed if the same be reasonable. It is within the power of a regularly organized mining district to limit the size of claims, and the number that may be held by any one person; to require the expenditure of certain amounts during stated periods to hold the claim; to make special regulations concerning records, and generally to impose reasonable requirements of a similar character.

DISTRICT RULES FOR MINING ON THE BEACH AND TIDE LANDS are discussed in Chapter VII., p. 30, ante.

NEW DISTRICTS.—"Owing to the exceptional status of Alaska, having no territorial legislature and its mining sections so distant from points from which judicial protection can be looked, the organization of new districts in that territory, with a full set of rules, will doubtless frequently occur. In such case the minutes of the first meeting

should show that it was called by public notice and attended by a majority of the miners either personally or by representation; should define boundaries, elect permanent Chairman and Recorder; restrict size of placer claims in crowded diggings, leave lode claims to the full size allowed by the Act of Congress, and make special provision for the keeping of permanent and accessible records. A district record kept in a pocket diary is no record" (2).

LAND OFFICE REGULATIONS.—With reference to the possible scope of rules which may be adopted by an organized mining district, we quote from the land office regulations:

"12.—It is provided by the Revised Statutes that the miners of each district may make rules and regulations not in conflict with the laws of the United States, or of the state or territory in which such districts are respectively situated, governing the location, manner of recording, and amount of work necessary to hold possession of a claim. They likewise require that the location shall be so distinctly marked on the ground that its boundaries may be readily traced. This is a very important matter, and locators cannot exercise too much care in defining their locations at the outset, inasmuch as the law requires that all records of mining locations made subsequent to May 10, 1872, shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located, by reference to some natural object or permanent monument, as will identify the claim."

CHAPTER IX.

TUNNEL RIGHTS.

United States Law.

Sec. 2323, Rev. Stats.—"Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid; but failure to

(2) Morrison's Mng. Rights, p. 7, Fuller vs. Harris, 29 Fed. Rep. (District Court of Alaska) 814.

prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.

"Where a person or company has or may run a tunnel for the purposes of developing a lode or lodes owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, * * * and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same as required by said act."—Act of February 11, 1875.

(From Land Office Regulations of June 24, 1899.)

"19.—The effect of section 2323, Revised Statutes, is simply to give the proprietors of a mining tunnel run in good faith the possessory right to fifteen hundred feet of any blind lodes cut, discovered, or intersected by such tunnel, which were not previously known to exist, within three thousand feet from the face or point of commencement of such tunnel, and to prohibit other parties, after the commencement of the tunnel, from prospecting for and making locations of lodes on the line thereof and within said distance of three thousand feet, unless such lodes appear upon the surface or were previously known to exist.

"20.—The term 'face,' as used in said section, is construed and held to mean the first working face formed in the tunnel, and to signify the point at which the tunnel actually enters cover; it being from this point that the three thousand feet are to be counted upon which prospecting is prohibited as aforesaid.

"21.—To avail themselves of the benefits of this provision of law, the proprietors of a mining tunnel will be required, at the time they enter cover as aforesaid, to give proper notice of their tunnel location by erecting a substantial post, board or monument at the face or point of commencement thereof, upon which should be posted a good and sufficient notice, giving the names of the parties or company claiming the tunnel right; the actual or proposed course or direction of the tunnel; the height and width thereof, and the course and distance from such face or point of commencement to some permanent well-known objects in the vicinity by which to fix and determine the locus in manner heretofore set forth applicable to locations of veins or lodes, and at the time of posting such notice they shall, in order that miners or prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary lines thereof, by stakes or monuments placed along such lines at proper intervals, to the terminus of the three thousand feet from the face or point of commencement of the

tunnel, and the lines so marked will define and govern as to the specific boundaries within which prospecting for lodes not previously known to exist is prohibited while work on the tunnel is being prosecuted with reasonable diligence.

"22.—At the time of posting notice and marking out the lines of the tunnel as aforesaid, a full and correct copy of such notice of location defining the tunnel claim must be filed for record with the mining recorder of the district, to which notice must be attached the sworn statement or declaration of the owners, claimants, or projectors of such tunnel, setting forth the facts in the case; stating the amount expended by themselves and their predecessors in interest in prosecuting work thereon; the extent of the work performed, and that it is bona fide their intention to prosecute work on the tunnel so located and described with reasonable diligence for the development of a vein or lode, or for the discovery of mines, or both, as the case may be. This notice of location must be duly recorded, and, with the said sworn statement attached, kept on the recorder's files for future reference."

FORMS.—A form of tunnel location notice for posting is submitted in Form No. 5, Appendix A, while Form No. 6 is recommended for record. There is no provision in either the laws of the United States, Washington or Alaska for posting or recording notice of tunnel location, but the locator will find it advisable to post such notice, and, in Washington, to complete such record by filing notice with the county auditor. The matter of record in Alaska will of course be governed by the local regulations, but in the absence of any specific rule as to tunnel rights, the locator should record his notice with the recorder of the district.

TUNNEL RIGHTS.—The owner of a mining tunnel has an inchoate right to all undiscovered lodes or veins along the line of his tunnel, not included within the lines of a prior location, contingent only on the diligent prosecution of its construction and the subsequent discovery of the vein or lode therein (1). And he is entitled to the possession of any fifteen hundred feet in continuous length along such lode or vein which includes the point of discovery in the tunnel (2). Any person may locate a mining claim at any place on the surface except on the line of the tunnel itself, but he will do so at his own risk, for if the vein or lode on which his location is made should be subsequently discovered in such tunnel, the owner of the tunnel may claim fifteen hundred feet thereon as above stated, and the

(1) *Hope Mng. Co. vs. Brown*, 7 Mont. 550; *Id.*, 11 Mont. 370; *Corning Tun. Co. vs. Pell*, 4 Col. 517.

(2) *Enterprise Mng. Co. vs. Rice Aspen Con. Mng. Co.*, 66 Fed. Rep. 200.

location of the surface claimant will be invalid as to the conflict. However the locator of a tunnel claim, located subsequent to a lode claim through which the tunnel passes, cannot acquire title to any blind or undiscovered lodes within the lines of such prior location and which may be discovered in the tunnel, since the prior lode location acquires all veins within its lines whether known at the time or not (3).

LOCATION OF LODS.—Lodes discovered along the line of the tunnel must be located and marked as in other cases except that the discovery within the tunnel takes the place of the discovery shaft, and the location notice should be posted directly above the point of discovery in such shaft.

ANNUAL LABOR on tunnel claims may be performed by work on the tunnel itself, when the tunnel and claims are owned by the same person or company. This is authorized by act of Congress of February 11, 1875.

CHAPTER X.

MILL SITES.

United States Law.

Sec. 2337, Rev. Stats.—“Where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non-adjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made of such non-adjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his millsite, as provided in this section.”

MANNER OF LOCATING.—A millsite is located in the same manner as a placer claim, with the exceptions that no discovery or discovery shaft is necessary, and it need not conform to the public survey. Only non-mineral land can be taken as a millsite.

TWO CLASSES OF MILLSITES.—The first class are millsites ap-

(3) Calhoun G. Mng. Co. vs. Ajax Gold Mng. Co., 69 Pac. Rep. (Colo.) 607.

conflict. How-
to a lode claim
to any blind or
tion and which
location acquires
not (3).

the line of the
except that the
shaft, and
point of discov-

ned by work on
ed by the same
ess of February

purtenant to lode claims. The object of the requirement of law that such millsites be non-adjacent to the lodes is to prevent the acquisition of mineral land as millsites. But it is the practice of the Land Department to allow the patent of a millsite contiguous to the side of a lode claim where its non-mineral character is shown, and even where the millsite adjoins the end of the lode claim, patent has been granted where it has been shown that the lode does not extend beyond the end line of the lode claim. The presumption is however that land adjoining the end line of a lode claim contains the vein extended and therefore is mineral in character and cannot be entered as a millsite(1). This presumption may be rebutted by proof (2), and in any event proof is required of the non-mineral character of land sought to be patented as a millsite (3). When a millsite is patented in connection with a lode claim, five hundred dollars' worth of improvements is sufficient to secure a patent for both. But where the millsite is patented separately, five hundred dollars' worth of improvements must be shown thereon.

THE SECOND CLASS OF MILLSITES are those which are claimed and patented by reason of their being in actual use for quartz mills, reduction works, or some necessary mining or milling purpose.

not contiguous
of such vein or
surface ground
patent for such
subject to the
are applicable
h non-adjacent
must be made at
the lode. The
a mine is con-
te, as provided

the same man-
ry or discovery
survey. Only

e millsites ap-

(Colo.) 607.

CHAPTER XI.

WATER RIGHTS WITH MINING CLAIMS.

United States Law.

Sec. 2339, Rev. Stats.—“Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.”

Sec. 2340.—“All patents granted, or pre-emption or homesteads al-

(1) *Molle Mollin Millsite*, 7 L. O. 4.

(2) *Morrison Mng. Rights*, p. 194.

(3) See Land Office Regulations, Secs. 13 and 68.

lowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by the preceding section."

Washington Law.

Constitution, Art. XXI., Sec. 1.—"The use of the waters of this state for irrigation, mining, and manufacturing purposes shall be deemed a public use."

S. C. 4090, Bal. Code.—"The unit of measure for water for irrigation, mining, milling and mechanical purposes in this state shall be a cubic foot of water per second of time."

Sec. 4091.—"The right to the use of water in any lake, pond, or flowing spring in this state, or the right to the use of water flowing in any river, stream, or ravine of this state, for irrigation, mining, or manufacturing purposes, or for supplying cities, towns, or villages with water, or for water works, may be acquired by appropriation, and as between appropriations, the first in time is the first in right."

Sec. 4092.—"Any person, persons, corporation, or association, desiring to appropriate water must post a notice in writing in a conspicuous place at the point of intended storage or diversion, stating therein,—

1. That such appropriator claims the water there lying, being, or flowing to the extent of one cubic foot of water per second of time, or some multiple or some fractional portion thereof;

2. The purpose for which said water is appropriated, and the place or places, as near as may be, of intended use;

3. The means by which it is intended to store or divert the same;

4. A copy of the notice must, within ten days after it is posted, be filed for record in the office of the county auditor of the county in which it is posted."

Sec. 4093.—"If said use is by storage, the appropriator must, within three months after the notice is posted, commence the construction of the works by which it is intended to store the same. If said use is by diversion, the appropriator must, within six months after the notice is posted, commence the excavation or construction of the works by which it is intended to divert the same; it being herein expressly provided that such works must be diligently and continuously prosecuted to completion, unless temporarily interrupted by the elements."

Sec. 4094.—"By a strict compliance to the above rules the appropriator's rights to the use of the water actually stored or diverted relates back to the time the notice was posted; but a failure to comply therewith deprives the appropriator of the right to the use of the water as against a subsequent appropriator who faithfully complies with the same."

rights, or rights
in water rights, as
provided in section."

waters of this state
shall be deemed a

water for irriga-
state shall be a

any lake, pond, or
water flowing in
mining, or manu-
factures with water,
and as between ap-

association, de-
termining in a conspicu-
ous manner therein,—
including, being, or
the end of time, or

and, and the place

where the same;
if it is posted, be
in the county in which

the owner must, within
the construction of
if said use is by
after the notice is
the works by which
is provided that
to completion,

the appropriat-
ed relates back
to the time of the
water as against
the same."

Sec. 4095.—"Persons who have heretofore appropriated water, and have not constructed works or have not diverted the water and applied it to some purpose, as herein stated, must, within thirty days after this act takes effect, proceed as in this chapter provided, or their right ceases.

Sec. 4096.—"The right to the use of water acquired by appropriation may be transferred, like other property, by deed. The county auditor of each county in this state must keep a book in which he must record the notices provided for in this chapter."

Sec. 4097.—"Appropriations of water heretofore made for any of the purposes in this chapter provided are hereby recognized, but this chapter shall not be construed to interfere with vested rights."

Sec. 4098.—"The provisions of sections 4092, 4093, 4094 and 4095 shall only apply to appropriations of water made for irrigation, and shall not apply to appropriations for irrigation made prior to the passage of this act, nor to water rights existing at the date of the passage of this act: Provided, That in appropriations for irrigation, begun but not completed prior to the passage of this act, the appropriator shall comply with the provisions of said sections 4092, 4093, 4094 and 4095: And further provided, That said sections shall not interfere with the vested rights of any irrigation district now organized."

Sec. 4099.—"Water appropriated for any of the purposes in this chapter mentioned may be changed to any other purpose herein specified, or to any other beneficial use, and the right to such use shall relate back to the original appropriation."

NOTE ON WASHINGTON LAW.—We have quoted above the laws of this state under which water must be appropriated for mining purposes, and call attention to the fact that while section 4098 limits the application of sections 4092-5 to appropriations for irrigation purposes only, yet section 4099 provides that the purpose for which the appropriation is made may be changed "to any other purpose herein specified, or to any other beneficial use," and both the constitution and laws recognize the use of water for mining purposes. For this reason we have recommended in Form No. 7, Appendix A, that the appropriation be made for "mining and irrigation purposes." This may be consistently done, for it is quite probable that water so appropriated may not always be used for the same purpose, and such changes in use are authorized by the law. There are other provisions of the Washington law not herein quoted, but the same apply only to water for irrigation purposes. Sections 4281-1a Bal. Code confer upon persons, and corporations formed under the laws of this state for the purpose of mining or manufacturing, certain rights in the use of water and its diversion from its natural channel, together with certain

privileges as to dams, canals, and waterways. These sections have perhaps been modified by the subsequent adoption of the state constitution, but the extent of such modification has never been judicially declared. An Act of March 14, 1899 (Laws 1899, p. 261), provides a method for condemnation of rights of way for waterways for mining and **agricultural** purposes. This brief reference to these other enactments is deemed sufficient for the scope of this work.

THE RIPARIAN OWNER'S RIGHTS to have the water run in its natural channels still exist in Washington, and are not abrogated by the act giving special property in water to prior appropriators (1).

FORMS.—A form of location notice for both posting and record is submitted in Form No. 7, Appendix A. The notice should be posted at both point of diversion and of intended storage, if storage be intended, and in Washington, must be recorded with the County Auditor within ten days after it has been posted.

CHAPTER XII.

COAL LANDS.

United States Law.

Sec. 2347, Rev. Stats.—“Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the Register of the proper land office, have the right to enter, by legal subdivisions, any quantity of vacant coal lands of the United States not otherwise appropriated or reserved by competent authority, not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the Receiver of not less than ten dollars per acre for such lands, where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road.

Sec. 2348.—“Any person or association of persons severally qualified, as above provided, who have opened and improved, or shall hereafter open and improve, any coal mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference-right of entry, under the preceding section, of the mines so opened and

(1) *Benton vs. Johncox*, 17 Wash. 277; 49 Pac. Rep. 495.

improved: Provided, That when any association of not less than four persons, severally qualified as above provided, shall have expended not less than five thousand dollars in working and improving any such mine or mines, such association may enter not exceeding six hundred and forty acres, including such mining improvements.

Sec. 2349.—“All claims under the preceding section must be presented to the Register of the proper land district within sixty days after the date of actual possession and the commencement of improvements on the land, by the filing of a declaratory statement therefor; but when the township plat is not on file at the date of such improvement, filing must be made within sixty days from the receipt of such plat at the district office; and where the improvements shall have been made prior to the expiration of three months from the third day of March, eighteen hundred and seventy-three, sixty days from the expiration of such three months shall be allowed for the filing of a declaratory statement, and no sale under the provisions of this section shall be allowed until the expiration of six months from the third day of March, eighteen hundred and seventy-three.

Sec. 2350.—“The three preceding sections shall be held to authorize only one entry by the same person or association of persons; and no association of persons any member of which shall have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof; and no member of any association which shall have taken the benefit of such sections shall enter or hold any other lands under their provisions; and all persons claiming under section twenty-three hundred and forty-eight shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant.

Sec. 2351.—“In case of conflicting claims upon coal lands where the improvements shall be commenced, after the third day of March, eighteen hundred and seventy-three, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference-right to purchase. And also where improvements have already been made prior to the third day of March, eighteen hundred and seventy-three, division of the land claimed may be made by legal subdivisions, to include, as near as may be, the valuable improvements of the respective parties. The Commissioner of the General Land Office is authorized to

issue all needful rules and regulations for carrying into effect the provisions of this and the four preceding sections."

NOTE that coal lands can be entered by legal subdivisions only, hence the lands must be surveyed before entry. An individual can enter 160 acres and an association only 320 acres. Only one entry can ever be made by any one person; that entry exhausts his right, and no entry can be made by an association any member of which is disqualified by reason of having made a prior entry.

TWO METHODS ARE PROVIDED FOR ENTRY OF COAL LANDS.—By the first the entry is accompanied by satisfactory proofs by affidavits of the character of the land. Upon receipt of such entry by the Register the same is certified to the Receiver and one year is allowed for payment. By the second method possession must be at once taken of the land and improvements made thereon. This method was adopted for unsurveyed lands, and where such entry has been made by taking possession, the entryman is allowed sixty days after the filing of the survey in which to make his entry at the land office.

THE PRICE TO BE PAID FOR COAL LANDS is not less than twenty dollars per acre if within fifteen miles of a completed railroad, and not less than ten dollars per acre if at a greater distance. Coal lands are not as a general rule excepted from railroad grants.

CHAPTER XIII.

TIMBER AND STONE LANDS.

UNITED STATES LAW, applicable to Washington, provides two methods by which both timber and stone may be acquired. First, non-mineral lands chiefly valuable for timber or stone may be purchased under the act of June 3, 1878. Building stone lands may be entered under the placer mining laws by authority of the Act of August 4, 1892, and timber may, under the Act of March 3, 1891, be cut and removed from public lands for mining and other purposes. The following complete and concise statement of the law upon the subject has been taken literally from Howell's Miners' Code:

USE OF TIMBER WITHOUT PURCHASE.—"Every miner has the right to use the timber upon his own claim for domestic use or the improvement of his claim. If there is insufficient timber upon the claim, under the provisions of the circular of the Secretary of the Interior of

March 17, 1898, hereafter referred to, the claimant can resort to non-mineral unappropriated public lands, and cut and remove timber to an amount not exceeding \$100 in stumpage value annually. This privilege extends to any company owning mining claims as well as to individuals.

PURCHASE OF TIMBER AND STONE LANDS.—"The Act of Congress of June 3, 1878, provided that surveyed non-mineral lands of the United States, unfit for cultivation and chiefly valuable for timber or stone, might be sold at the minimum price of two dollars and fifty cents per acre in tracts not exceeding 160 acres to any one person or association of persons.

The applicant for such a tract must file with the Register of the local land office a statement in duplicate, designating the tract by legal subdivisions, and certifying: (1) That said tract is unfit for cultivation and is chiefly valuable for its timber or stone; (2) that it contains no mining or other improvements (except ditches or canals where any such exist) save such as are made by or belong to the applicant; (3) that it contains no known valuable deposit of gold, silver, cinnabar, copper or coal; (4) that the applicant has made no other application under this law; (5) that he does not apply to purchase the same on speculation, but in good faith for his own exclusive use and benefit, and (6) that he has made no agreement, directly or indirectly, for the transfer of the title or any part thereof to any other person. The applicant must swear to this statement before the Register or Receiver.

Notice of said application must thereupon be published for sixty days in a newspaper published nearest the premises, and be posted during the same period in the office of the Register. After the expiration of sixty days, if no adverse claim be filed, the applicant must furnish to the Register of the land office satisfactory evidence of the truth of the statements contained in his sworn application and of the publication of the said notice. Thereafter, upon payment of the land office fees and the price of the land, he is entitled to a patent."

PURCHASE OF TIMBER WITHOUT LAND.—"The Act of Congress of March 3, 1891, provided that timber might be cut and removed from the timber lands of the United States, by the resident of any state or territory for agricultural, mining, manufacturing or domestic purposes, under rules and regulations to be prescribed by the Secretary of the Interior.

By the circular of March 17, 1898, the Secretary of the Interior has prescribed the rules under which timber can thus be obtained. Briefly stated, this circular provides that settlers and claimants on public lands, who have an insufficient supply of timber on their own claims for neces-

sary use in developing the mineral and other natural resources of their lands, may procure timber, free of charge, from unoccupied, unreserved, non-mineral public lands, to an extent not exceeding \$100 in stumpage value in any one year. The timber must be strictly for use upon the claim of the person exercising the privilege, however, and cannot be sold.

It is not necessary to secure the permission of the land department to exercise such privilege, but the department reserves the right to restrict or prohibit such privilege in case of abuse.

Where larger amounts of timber are required by any resident of the state, a petition for the purchase of any particular tract will be considered by the land department. The details of the procedure in the land office are too extensive to describe here in detail. Briefly stated, the petition should state the location and character of the land, describe the timber situated thereon and make an estimate of the quantity.

Before any sale is authorized, the timber is examined and appraised by an official appointed for that purpose, and it cannot be sold for less than the appraised value. When a sale is ordered, a notice is published stating the time and place for filing bids, and other information necessary for a correct understanding of the terms of the sale. The successful bidder must pay the amount of his bid within thirty days after notice of the award, and the timber must all be cut and removed within one year."

OWNERSHIP OF STONE TAKEN FROM PUBLIC LANDS is in the party who removes the same, and he may claim a lien therefor upon a building in the construction of which it has been used, although the title to the land from which it was taken is in the United States (1).

Alaska Law (2).

We quote the following section from the Act of Congress of May 14, 1898, and append the Land Office Regulations issued thereunder:

"Sec. 11.—That the Secretary of the Interior, under such rules and regulations as he may prescribe, may cause to be appraised the timber or any part thereof upon public lands in the District of Alaska, and may from time to time sell so much thereof as he may deem proper for not less than the appraised value thereof, in such quantities to each purchaser as he shall prescribe, to be used in the District of Alaska, but not for ex-

(1) Johnson vs. Harrington, 5 Wash. 73; 31 Pac. Rep. 316.

(2) House Bill No. 9291, now pending before Congress, provides for the extension to Alaska of the Timber and Stone Act of June 3, 1878. Without the privileges of this law timber can be acquired in Alaska under Sec. 11, Act of May 14, 1898, just quoted, and should the pending bill become a law it will simply add another method. Of course in all cases timber may be cut from mining claims even before patent, for mining purposes, including the building of miners' cabins, roads, etc.

resources of their
occupied, unreserved,
\$100 in stumpage
for use upon the
and cannot be sold.
and department to
the right to restrict

any resident of the
will be considered
in the land office
stated, the petition
describe the timber

med and appraised
not be sold for less
notice is published
information neces-
sary. The success-
y days after notice
moved within one

UBLIC LANDS is in
then therefor upon
sed, although the
ed States (1).

ngress of May 14,
ereunder:

er such rules and
sed the timber or
Alaska, and may
n proper for not
o each purchaser
, but not for ex-

des for the exten-
hout the privileges
et of May 14, 1898,
mply add another
claims even before
oins, roads, etc.

port therefrom. And such sales shall at all times be limited to actual necessities for consumption in the district from year to year, and payments for such timber shall be made to the Receiver of Public Moneys of the local land office of the land district in which said timber may be sold, under such rules and regulations as the Secretary of the Interior may prescribe, and the moneys arising therefrom shall be accounted for by the Receiver of such land office to the Commissioner of the General Land Office in a separate account, and shall be covered into the treasury. The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber found upon the public lands in said District of Alaska, by actual settlers, residents, individual miners, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and for domestic purposes, as may actually be needed by such persons for such purposes."

(From Land Office Regulations Issued June 8, 1898.)

"43.—While sales of timber are optional, and the Secretary of the Interior may exercise his discretion at all times as to the necessity or advisability of any sale, petitions from responsible persons for the sale of timber in particular localities will be received by this department for consideration.

Such petitions must describe the land upon which the timber stands, as definitely as possible by natural landmarks; the character of the country, whether rough, steep, or mountainous, agricultural or mineral, or valuable chiefly for its forest growth; and state whether or not the removal of the timber would injuriously affect the public interests. If any of the timber is dead, estimate the quantity in feet, board measure, with the value, and state whether killed by fire or other cause. Of the live timber, state the different kinds and estimate the quantity of each kind in trees per acre. Estimate the average diameter of each kind of timber, and estimate the number of trees of each kind per acre above the average diameter. State the number of trees of each kind it is desired to have offered for sale, with an estimate of the number of feet, board measure, therein, and an estimate of the value of the timber as it stands."

"44.—Before any sale is authorized the timber will be examined and appraised. Notice thereof will be given by publication by the Commissioner of the General Land Office.

"45.—The time and place of filing bids and other information for a correct understanding of the terms of each sale will be given by published notices or otherwise. Timber is not to be sold for less than the appraised value. The Commissioner of the General Land Office must

approve all sales, and he may make allotment of quantity to any bidder or bidders if he deems proper. The right is also reserved to reject any or all bids. A reasonable cash deposit, to accompany each bid, will be required."

"46.—Within thirty days after notice to a bidder of an award of timber to him payment must be made in full to the Receiver for the timber so awarded; or equal payments therefor may be made in thirty, sixty, and ninety days from date of such notice, at the option of the purchaser. The purchaser must have in hand the receipt of the Receiver for each payment before he will be allowed to cut, remove, or otherwise dispose of the timber covered by that payment. The timber must all be cut and removed within one year from the date of payment therefor; failing to do so, the purchaser will forfeit his right to the timber standing or unremoved and to his purchase money: Provided, the limit of one year herein named may be extended by the Commissioner of the General Land Office, in his discretion, upon good and sufficient reasons being shown."

"47.—Notice must be given by the purchaser to the Commissioner of the General Land Office of the proposed date of cutting and removal of the timber, so that, if practicable, an official may be designated to supervise such cutting and removal. Upon application of purchasers, permits to erect temporary saw mills for the purpose of cutting or manufacturing timber purchased under this act may be granted by the Commissioner of the General Land Office, if not incompatible with the public interests."

"48.—No timber taken from the public lands and sold as above prescribed may be exported from the District of Alaska."

"50.—Actual settlers, residents, individual miners, and prospectors for minerals may procure, free of charge, from unoccupied, unreserved public lands in Alaska, for firewood, fencing, buildings, mining, prospecting, and for domestic purposes, so much timber as may be actually needed by such persons, for individual use, to an extent not exceeding, in stumpage valuation, \$100 in any one year. It is not necessary to secure permission from the department to take timber from public lands as allowed in this paragraph. The exercise of such privilege is, however, subject at all times to supervision by the department, with a view to restriction or prohibition if deemed necessary. The uses specified in this paragraph constitute the only purposes for which timber may be taken, free of charge, from public lands in Alaska."

"51.—In cases arising under the preceding paragraph in which the parties needing the timber are not in a position to procure it from the

public lands themselves, it is allowable for them to secure the cutting, removing, sawing, or other manufacture of the timber through the medium of others, agreeing with the parties thus acting as their agents direct in taking or otherwise handling the timber that they shall be paid a reasonable amount to cover their time and labor expended and all legitimate expenses incurred in connection therewith exclusive of any charge for the timber itself."

CHAPTER XIV.

ANNUAL LABOR ON MINING CLAIMS.

United States Law.

(From Section 2324, Rev. Stats., as Amended by Act of Jan. 22, 1880.)

* * * * On each claim located after the 10th day of May, 1872, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. * * * ; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. * * *

"Provided, That the period within which the work required to be done annually on all unpatented mineral claims shall commence on the first day of January succeeding the date of location of such claim, and this section shall apply to all claims located since the 10th day of May A. D. 1872."

,Act of Congress of February 11, 1875.—Be it enacted, etc., "That section two thousand three hundred and twenty-four of the Revised Statutes be, and the same is hereby amended so that where a person or company has or may run a tunnel for the purposes of developing a lode or lodes, owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since the passage of said act; and such person or company shall not be required to perform work on the surface or said lode or lodes in order to hold the same as required by said act."

Washington Law.

Sec. 3154, Bal. Code.—“In order to hold the possessory right to a location of a mine not less than one hundred dollars' worth of work must be performed or improvements made thereon annually: Provided, That the period within which the work required to be done annually on all unpatented claims so located shall commence on the first day of January succeeding the date of location of such claim.”

Sec. 6, Act of 1899, p. 70.—“Within thirty days after the expiration of the period of time fixed for the performance of annual labor or the making of improvements upon any quartz or lode mining claim or premises, the person in whose behalf such work or improvements was made or some person for him knowing the facts, shall make and record in the office of the County Auditor of the county wherein such claims are situate an affidavit or oath of labor performed on such claim. Such affidavit shall state the exact amount and kind of labor, including the number of feet of shaft, tunnel or open cut made on such claim, or any other kind of improvements allowed by law or by rules of mining districts made thereon.”

Sec. 7.—“Such affidavit when so recorded shall be prima facie evidence of the performance of such labor or the making of such improvements, and such original affidavit after it has been recorded, or a certified copy of record of same, shall be received as evidence accordingly by all the courts of this state.”

Alaska Law.

As there is no special legislation upon the subject of annual labor on mining claims in Alaska, the matter is regulated by the laws of the United States above quoted, and such further local rules and regulations as may be made. Section 15 of the Carter Alaska Act, just passed by Congress, provides that the Recorder shall record, among other writings, “affidavits of annual work done on mining claims,” and section 16 provides that mining districts may provide for a similar record. We have been unable to find, however, any provision making such recorded affidavits presumptive evidence in court that such work has been performed. This is the sole purpose of the record, for if the work be done the claim will not be forfeited by a mere failure to file the affidavit. The statutory provision for filing proof of annual labor has usually in the states made the recorded affidavit evidence that the work was done, and hence a convenient means of proof, but if the fact must always be proven by other evidence, as would seem to be the case under the Carter Act, there can be nothing gained by filing the affidavit.

FORM.—For a form of affidavit of annual labor recommended for use in both Washington and Alaska, see Form No. 8, Appendix A.

MINING DISTRICTS cannot designate the amount of work to be performed as the annual labor, nor fix any arbitrary value of a day's work at such. The amount required is the amount of labor and improvements that \$100 can procure in the particular locality at the particular time in question. In other words, it is the reasonable market value of the labor and materials at that time and place (1). The amount which the work may have enhanced the value of the claim is not the test (2).

HOLDER OF CLAIM MAY RESUME WORK, even after the expiration of the year, or at any time if before another bona fide location of the claim has been made. The United States statute provides that upon failure to perform the work the claim shall be open to relocation, "provided that the original locators, * * * have not resumed work upon the claim." Under this it has been held that the new location must not only be made but completed before the prior holder is debarred from resuming work and thus avoiding the forfeiture (3). The better rule, however, is that the forfeiture by the prior locator is complete when the year has expired without the work having been done and a new location initiated thereon by the posting of a notice (4). The holder need not have actually completed his \$100 worth of work and improvements; if he has actually begun the same before the end of the year, or as stated, before a relocation, and continues the same thereafter in good faith until the required amount has been done.

WHAT WILL COUNT.—Work done and improvements made outside of a claim, if made for the purpose of developing the claim and extracting the ores therefrom, are as available for holding the claim as if done within its limits. And where a group of claims are held in common and are capable of being worked by one general system which develops the whole group, work so performed equal in amount to that required upon all, will hold the claims. Such improvements need not be upon any of the claims, and the law is satisfied if the claims are directly benefited thereby. The labor is not required to be applied in any particular manner so that it is unquestionably devoted to the claim. It may be in digging, erection of works for mining, in placing machinery, or in buildings on the claim necessary for its working. It has been held that a road built to the claim is labor performed and improvements made

(1) *Morrison Mng. Rights*, pp. 6 and 78, *Quimby vs. Boyd*, 8 Colo. 194, 342.

(2) *Mattingly vs. Lewisohn*, 35 Pac. Rep. (Mont.) 111.

(3) *Gonn vs. Russell*, 3 Mont. 358.

(4) *Little Tunnell Co. vs. Kimber*, 1 Mor. M. R. 536; *Pelican Co. vs. Snodgrass*, 9 Colo. 339, 12 Pac. Rep. 206.

upon the claim within the meaning of the law. Where mining property was idle and the improvements thereon were valuable, the work of a watchman in protecting the same from deterioration, loss or danger, has been held to count for annual labor (5).

WHAT WILL NOT COUNT.—Material brought upon the mine and not used, or taken away after slight use will not count. So, also, a house built 200 feet from the claim for the use of miners. Traveling expenses in going to and from the claim will not count, nor will work done by third parties and bought in (6).

WHEN MADE.—The locator has the whole of each year in which to represent his claim, and a relocation made before the full time has elapsed is void. In such case the relocater is a mere trespasser, and his relocation is not cured by a subsequent default by the original locator (7).

RECORDING AFFIDAVIT.—The provision for recording is designed to enable the owner to better preserve his proof, and for this purpose the record is made prima facie evidence of the facts authorized to be stated therein. A failure to record an affidavit does not work a forfeiture of the claim, and the facts may be proven by other testimony (8). An affidavit recorded more than thirty days after the completion of the annual labor would perhaps lose its character as prima facie evidence.

CHAPTER XV.

FORFEITURE TO CO-OWNERS.

United States Law.

From Sec. 2324, Rev. Stats.— * * * “Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and if at the expiration of ninety days after such notice

(5) *Mt. Diablo Mng. Co. vs. Callison*, 5 Sawyer 439; *Lockhart vs. Rollins*, 21 Pac. Rep. 415.

(6) *Honaker vs. Martin*, 11 Mont. 21, 27 Pac. Rep. 397; *Little Tunnel Co. vs. Kimber*, *supra*; *Du Prat vs. James*, 65 Cal. 555; *Remington vs. Banditt*, 9 Pac. Rep. 319.

(7) *Belk vs. Meagher*, 104 U. S. 279.

(8) *Book vs. Justice Mng. Co.*, 58 Fed. Rep. 106.

re mining property
ole, the work of a
loss or danger, has

upon the mine and
So, also, a house
Traveling expenses
will work done by

h year in which to-
ll time has elapsed
and his relocation
ator (7).

recording is de-
and for this pur-
acts authorized to
s not work a for-
mer testimony (8).
completion of the
evidence.

on the failure of
of the expendi-
ed the labor or
year, give such
e by publication
ast once a week
after such notice

art vs. Rollins, 21

le Tunnel Co. vs.
itt, 9 Pac. Rep. 319.

in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his co-owners who have made the required expenditures."

WASHINGTON AND ALASKA have no special legislation upon this subject, and hence the matter is governed entirely by the United States law. The notes hereto appended will apply to both with equal effect.

FORMS for "advertising out" delinquent co-owners are given in Form No. 9, Appendix A.

RECORDING PROOF OF FORFEITURE is not required by law. It is a commendable practice, however, to record the same with the County Auditor in Washington, or with the Recorder of organized mining districts in Alaska. When patent is applied for the rules of the Land Department require proof of forfeiture by co-owners and the required notice given. The notice of forfeiture should be accompanied, when recorded, with proof of personal service or publication thereof, as the case may be, and also an affidavit to the effect that the delinquent has failed to pay his required portion within the time stated in the notice.

A STRICT CONSTRUCTION is given to this statute and every requirement must be carefully followed. Every presumption of law is against forfeiture (1). If any of the essential elements are wanting, or if there is no foundation in fact for the notice, its service will not divest the co-owner of his title (2).

MERE POSSESSORY RIGHTS in lands on the public domain can be retained only by continued possession and are forfeited and lost by abandonment. (3).

(1) Lindley on Mines, Sec. 645.

(2) Turner vs. Sawyer, 150 U. S. 585; Brundy vs. Mayfield, 15 Mont. 201, 38 Pac. Rep. 1067.

(3) Carroll vs. Price, 81 Fed. Rep. (District Alaska) 137.

CHAPTER XVI.

RELOCATION AND AMENDED LOCATION.

Washington Law.

Sec. 5, Act of 1899, p. 70.—“ If at any time the locator of any quartz or lode mining claim heretofore or hereafter located, or his assigns, shall learn that his original certificate was defective, or that the requirements of the law had not been complied with before filing, or shall be desirous of changing his surface boundaries, or of taking in any additional ground which is subject to location, or in any case the original certificate was made prior to the passage of this law, and he shall be desirous of securing the benefits of this act, such locator or his assigns may file an amended certificate of location, subject to the provisions of this act, regarding the making of new locations.”

Sec. 8.—“ The relocation of forfeited or abandoned quartz or lode claims shall only be made by sinking a new discovery shaft and fixing new boundaries in the same manner and to the same extent as is required in making a new location, or the relocater may sink the original discovery shaft ten feet deeper than it was at the date of commencement of such relocation, and shall erect new, or make the old monuments the same as originally required. In either case a new location monument shall be erected, and the location certificate shall state if the whole or any part of the new location is located as abandoned property.”

IN ALASKA there is no provision for either relocation or amended location of mining claims. Of course either may be made without special provision in the law therefor, but in all such cases it must be made in the same manner as an original location.

FORMS.—The same form should be used for either relocation or amended location as in the case of original locations, with an additional clause inserted to the effect that “This is an amended location (or relocation) of the Lode Mining claim, located on the same ground (give reference to date and record).”

AMENDED LOCATION.—By Sec. 5, of the Act of 1899, Laws of Washington, just quoted, it is provided that a locator may amend his location, or his recorded certificate thereof. By this course the ground included in the claim may be changed, subject, however, to any intervening rights of others who may have made locations in the vicinity, and whose rights could not, of course, be affected by the amended location. Whether it will be necessary in such cases to again sink the discovery shaft or cut required by sections 2 and 3 of the same act is doubtful,

depending upon the interpretation which the court may place upon the concluding clause of section 5, which reads: "Subject to the provisions of this act regarding the making of new locations." If this be held (as would seem more reasonable) to refer only to the latter portion of the section, then this work is required only in case of amendment of locations made prior to the approval of the act; but if it be held to apply to the whole section, then with any amended location the discovery exploration work must be done anew. Until a judicial determination has been had, the prudent locator of a valuable claim will do the extra work. Of course, in any event, if the amended location be made and amended certificate filed to cure defects in the discovery exploration work of the original location, then the work must be performed or completed that such defect may be cured.

RELOCATION.—A party cannot make a valid relocation of a mining claim until the rights of the former locator have been abandoned, forfeited or otherwise ended (1). A statement in a notice that the claim is a relocation is an admission of the validity of the original location, and an assertion that the relocater claims by reason of the forfeiture or abandonment of the same by the original locator (2).

If the former location was not a valid one it should not be mentioned or recognized by the subsequent notice of location. Indeed, there is a question as to the wisdom of mentioning the prior location at all in any case where the subsequent location is adverse to the first.

A NEW DISCOVERY by the party relocating is not necessary, but a vein or lode sufficient to support a location must be known to him (3).

ABANDONMENT.—When a mining claim is abandoned by the locator, it is thereupon immediately subject to relocation. Abandonment is a question of intention. Leaving the claim in a neglected condition is no evidence of abandonment. But if a claimant leaves his claim with the intention of never returning and of never asserting any further right of ownership over it, he thereby abandons it, and the claim thereupon becomes subject to relocation. The intention once formed and acted upon is as absolute if it exists for a minute or a second as though it continued for years. The burden of proving abandonment rests upon the party alleging it (4).

FORFEITURE.—The failure of a locator of a mining claim to perform the requisite annual labor subjects the claim to relocation, and a

(1) *Belk vs. Meagher*, 104 U. S. 279.

(2) *Willis vs. Blaine*, 20 Pac. Rep. 798.

(3) *Lindley on Mines*, Sec. 403.

(4) *Stone vs. Geyser Co.*, 52 Cal. 315; *Carter vs. Bacigalupi*, 83 Cal. 187; *Omar vs. Soper* (Col.), 18 Pac. Rep. 448; *Trevaskis vs. Peard*, 44 Pac. Rep. 246.

peaceable entry may be made for that purpose, even though the claim is occupied by the original locator. The right of the original locator to perform the required amount of work after such failure depends upon his beginning the work before the relocation, and completing the same with reasonable diligence (5).

RELOCATION BY OWNER AFTER FORFEITURE.—It has been held in Utah that the locator of a mining claim, who, by failure to perform annual labor, has allowed his location to lapse and become subject to relocation, has a right to make a new location himself covering the same ground (6). This would seem to give to the locator, who has failed to perform his annual labor, the alternative of resuming work under the old location or making a new one. In such a case a relocation would be an evasion of the positive requirement of annual labor, and it is doubtful whether the Utah decision is good law. Where a claimant who is in default of his annual labor desires to still hold his claim, he should pursue the safe method of resuming work on the claim rather than adopting the questionable one of relocating.

CHAPTER XVII.

MINING PARTNERSHIPS.

HOW FORMED.—There is no special legislation concerning mining partnerships in either Washington or Alaska. Nor is any necessary to their creation or existence. A mining partnership is formed when two or more persons who own or acquire a mine actually engage together in working the same. The relation exists without statutory authority by what Lindley terms the "American common law of mining" (1). Such a partnership may be formed without a special agreement therefor. When parties do such acts as in law constitute a partnership, they are such in law whether they so intend to be or not. It is not necessary that the parties "own" a mine; to "acquire" one is sufficient, and they may acquire the same by lease, option or location, as well as by direct purchase. Mining partnerships differ from ordinary or general partnerships, in that the interest of each partner is assignable without the consent of the others, and

(5) *Du Prat vs. James*, 65 Cal. 555; *Hirschler vs. McKendricks*, 16 Mont. 212; 40 Pac. Rep. 290.

(6) *Warnock vs. DeWitt*, 40 Pac. Rep. (Utah) 205.

(1) *Lindley on Mines*, Sec. 796.

ugh the claim is
original locator to
depends upon his
g the same with

E.—It has been
y failure to per-
come subject to
vering the same
no has failed to
k under the old
on would be an
d it is doubtful
mant who is in
e should pursue
an adopting the

the death or insolvency of one of the partners does not dissolve the partnership. The decision of members owning a majority of the interests or shares in the partnership governs. As in a general partnership, each partner is the agent of the partnership and may bind it by any act or contract in the ordinary course of business; but in a mining partnership one partner cannot bind the others by note or written contract of indebtedness without express authority (2). Each partner has a lien on the partnership property for the payment of all its debts and other expenses incurred by him in carrying on the enterprise for the benefit of the partnership (3).

EXTENT OF LIENS.—The partnership property, both real and personal, is made a trust fund, to be used in the improvement of the mine and the payment of the company's obligations. All mines, flumes, canals, etc., used by the partnership, whether purchased with partnership funds or bought in by an individual member, are subject to such lien (4).

A GENERAL PARTNERSHIP may of course be formed for the purpose of mining, and when so formed the relation of the partners to each other is the same as in any other ordinary partnership.

AN AGREEMENT BETWEEN TWO PERSONS TO PROSPECT for and locate mines on the public domain is not within the statute of frauds, and therefore need not be in writing, and where two persons make such an oral agreement, a location by one in his own name will be decreed to be for the benefit of both, and a court of equity will compel a conveyance to the other partner, or an accounting for any moneys received if the property has been sold by the one who so located (5).

A GRUBSTAKE CONTRACT is not ordinarily a partnership. It will be mentioned in Chapter XXII. at page 69.

(2) *Skillman vs. Lachman*, 23 Cal. 199; *Taylor vs. Castle*, 11 Mor. M. R. 484.

(3) *Daugherty vs. Cleary*, 30 Cal. 290.

(4) *Duryea vs. Burt*, 28 Cal. 584.

(5) *Raymond vs. Johnson*, 17 Wash. 232; 40 Pac. Rep. 492.

erning mining
cessary to their
en two or more
er in working
by what Lind-
uch a partner-

When parties
e such in law
at the parties
y acquire the
ase. Mining
n that the in-
ne others, and

s, 16 Mont. 212;

CHAPTER XVIII.

PROCEDURE TO OBTAIN PATENTS.

United States Law.

Sec. 2325, Rev. Stat.—“A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes, who has, or have, complied with the terms of this chapter, may file in the proper land office an application for a patent, under oath, showing such compliance, together with a plat and field notes of the claim or claims in common, made by or under the direction of the United States Surveyor-General, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land office, and shall thereupon be entitled to a patent for the land, in the manner following: The Register of the land office, upon the filing of such application, plat, field notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with the register a certificate of the United States Surveyor-General that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description, to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the Register and the Receiver of the proper land office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except

it be shown that the applicant has failed to comply with the terms of this chapter.

Provided, That where the claimant for a patent is not a resident of or within the land district wherein the vein, lode, ledge, or deposit sought to be patented is located, the application for patent and the affidavits required to be made in this section by the claimant for such patent may be made by his, her, or its authorized agent, where said agent is conversant with the facts to be established by said affidavits. (The proviso is from the act of January 22, 1880.)

Sec. 2327.—“The description of vein or lode claims, upon surveyed lands, shall designate the location of the claim with reference to the lines of the public surveys, but need not conform therewith; but where a patent shall be issued for claims upon unsurveyed lands, the Surveyor-General, in extending the surveys, shall adjust the same to the boundaries of such patented claim, according to the plat or description thereof, but so as in no case to interfere with or change the location of any such patented claim.

(For sections relating to patents for placer claims, see ante, pages 24-26.)

Sec. 2334.—“The Surveyor-General of the United States may appoint in each land district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining claims. The expenses of the survey of vein or lode claims, and the survey and subdivision of placer claims into smaller quantities than one hundred and sixty acres, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy surveyor to make the survey. The Commissioner of the General Land Office shall also have power to establish the maximum charges for surveys and publication of notices under this chapter; and in case of excessive charges for publication, he may designate any newspaper published in a land district where mines are situated for the publication of mining notices in such district, and fix the rates to be charged by such paper; and, to the end that the Commissioner may be fully informed on the subject, each applicant shall file with the Register a sworn statement of all charges and fees paid by such applicant for publication and surveys, together with all fees and money paid the Register and Receiver of the land office, which statement shall be transmitted, with the other papers in the case, to the Commissioner of the General Land Office.

Sec. 2335.—“All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths within

the land district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the Register and Receiver of the land office. In cases of contest as to the mineral or agricultural character of the land, the testimony and proofs may be taken as herein provided on personal notice of at least ten days to the opposing party; or, if such party cannot be found, then by publication of at least once a week for thirty days in a newspaper, to be designated by the Register of the land office as published nearest to the location of such land; and the Register shall require proof that such notice has been given.

Sec. 2321.—“Proof of citizenship, under this chapter, may consist in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge, or upon information and belief, and in the case of a corporation organized under the laws of the United States, or of any state or territory thereof, by filing of a certified copy of their charter or certificate of incorporation.

Sec. 2.—“That applicants for mineral patents, if residing beyond the limits of the district wherein the claim is situated, may make any oath or affidavit required for proof of citizenship before the clerk of any court of record, or before any notary public of any state or territory.”—Act of April 26, 1882.

OBTAINING PATENTS.—It does not come within the purpose of this book to give minute directions as to the method of obtaining a patent. The locator who desires to secure a patent will be compelled to secure the services of a United States deputy mineral surveyor, who will advise him as to the various steps necessary. We will state briefly, however, the course which must be pursued.

An application is first made to the Surveyor-General for an order of survey. This application must be accompanied by a certified copy of the notice of location, and a fee of \$30 in case of lode claims, and from \$40 to \$80 in case of placers; which fees must be deposited in an United States depository. The Surveyor-General thereupon issues an order of survey to the deputy mineral surveyor designated by the claimant. That official will then make the survey, and send his returns to the Surveyor-General's office. Two copies of the approved plat will be returned to the claimant, one to be posted on the claim, the other to be forwarded with the application for patent. The claimant will then post the plat, and notice of his intention to apply for patent, in a conspicuous place upon the claim, where they must remain posted during the succeeding sixty

testimony and
ly certified by
nd effect as if

In cases of
nd, the testi-
onal notice of
not be found,
a newspaper,
hed nearest to
roof that such

may consist in
the case of an
eir authorized
nd belief, and
United States,
copy of their

ng beyond the
e any oath or
f any court of
ry."—Act of

he purpose of
ing a patent.
led to secure
o will advise
however, the

an order of
d copy of the
nd from \$40
n an United
an order of
nant. That
e Surveyor-
urned to the
warded with
he plat, and
place upon
eding sixty

day period of publication. The claimant must then send to the Register of the local land office the following documents:

(1) Proof by affidavit of two disinterested persons that the plat and notice of intention to apply for patent have been posted on the claim, and remained so posted during the entire sixty days.

(2) Copy of the official plat.

(3) Transcript of field notes.

(4) Application for patent.

(5) Affidavit of \$500 improvements.

(6) An affidavit of the citizenship of each claimant; or, in case of a corporation, a certified copy of the certificate of incorporation.

(7) Agreement of publisher to hold the claimant alone responsible for cost of publication.

(8) Two copies of the notice to be published.

(9) Certified copy of the notice of location.

(10) An abstract of title showing title to the claim in the claimant.

(11) Ten dollars for fees for filing in the land office.

Upon the approval of these papers the Register signs the notice and forwards it to the local paper for publication. If after the expiration of sixty days no adverse claim is filed, the claimant is permitted to make his final proofs. With the submission of these proofs in due form he must pay the purchase price (\$5 per acre in case of lode claims, and \$2.50 per acre in case of placer claims) and a Receiver's receipt will at once be issued to him therefor, and patent should follow in due course of time.

CHAPTER XIX.

ADVERSE CLAIMS.

United States Law.

Sec. 2326, Rev. Stats.—“Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to

final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment roll with the Register of the land office, together with the certificate of the Surveyor-General that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the Receiver five dollars per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment roll shall be certified by the Register to the Commissioner of the General Land Office, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim, with the proper fees, and file the certificate and description by the Surveyor-General, whereupon the Register shall certify the proceedings and judgment roll to the Commissioner of the General Land Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of the title conveyed by a patent for a mining claim to any person whatever."

"The adverse claim required by section twenty-three hundred and twenty-six of the Revised Statutes, may be verified by the oath of any duly authorized agent or attorney-in-fact of the adverse claimant cognizant of the facts stated; and the adverse claimant, if residing or at the time beyond the limits of the district wherein the claim is situated, may make oath to the adverse claim before the clerk of any court of record of the United States or the state or territory where the adverse claimant may then be, or before any notary public of such state or territory."—(Act of April 26, 1882.)

"If in any action brought pursuant to section twenty-three hundred and twenty-six of the Revised Statutes, title to the ground in controversy shall not be established by either party, the jury shall so find, and judgment shall be entered according to the verdict. In such case costs shall not be allowed to either party, and the claimant shall not proceed in the land office or be entitled to a patent for the ground in controversy until he shall have perfected his title."—(Act of March 3, 1881.)

ADVERSE CLAIMS.—During the sixty days while the notice of application for patent is being published, any one who has a prior claim to any part of the ground applied for should adverse the application. The extent of the adverse claim should be set forth by an affidavit of the

adverse claimant or his agent, showing the nature, boundaries and extent of such adverse claim, and should be accompanied by a plat. For this reason the service of a mineral surveyor is required, who will be able to direct the claimant as to the steps necessary.

The law requires the notice of application for patent to be served on the public in two ways: First, it must be published for sixty days in some newspaper published nearest the claim, and, second, during the same period it must be posted in a conspicuous place on the claim, together with a plat of the claim as officially surveyed. An adjoining claimant, who may have adverse rights, is presumed to have notice of the application through these two methods of service. If he does not in fact have such notice by either of these methods it may be his misfortune, but the law will conclusively presume it to be his fault. After the sixty days have elapsed and mineral entry of application has been made, all adverse rights that might have been asserted thereto are forever barred, though, of course, a failure to advise does not determine adverse rights that on development may be found to exist beneath the surface (1).

NEW NOTICE.—When by reason of defects in the giving of notice a new notice is required, adverse claimants will have sixty days after the first publication of the new notice in which to file their adverse claims (2).

CHAPTER XX.

LODES WITHIN PLACER CLAIMS.

United States Law.

Sec. 2333, Rev. Stats.—“Where the same person, association, or corporation is in possession of a placer claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer claim, subject to the provisions of this chapter, including such vein or lode, upon the payment of five dollars per acre for such vein or lode claim, and twenty-five feet of surface on each side thereof. The remainder of the placer claim, or any placer claim not embracing any vein or lode claim, shall be paid for at the rate of two dollars and fifty cents per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section

(1) *Last Chance Mng. Co. vs. Tyler Mng. Co.*, 61 Fed. Rep. 565.

(2) *Lindley on Mines*, Sec. 738; *Wheeler vs. Smith*, 23 L. D. (Wash.) 395.

twenty-three hundred and twenty, is known to exist within the boundaries of a placer claim, an application for a patent for such placer claim which does not include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer claim is not known, a patent for the placer claim shall convey all the valuable mineral and other deposits within the boundaries thereof."

IN CASE A LODGE IS KNOWN TO EXIST within the boundaries of a placer claim at the time when patent is sought, a statement of that fact should be made in the application, otherwise it will be conclusively presumed that the placer claimant has no right to the lode.

The time at which the lode must be known in order to be excepted from the grant of a placer patent is the date of the application for patent (1). If a lode is discovered subsequent to that date, the placer patent will convey good title to the same.

WHAT IS A "KNOWN LODGE."—Not every crevice in the rocks, nor every outcropping on the surface which suggests the possibility of mineral, or which on subsequent exploration develops ore of great value, can be adjudged a known vein or lode within the meaning of the statute (1). But if a vein is of such a character as to justify the expenditure of money in its development, and to add some substantial value to the land by reason of its existence, then it is a "known lode" within the meaning of the law (2).

It is not necessary that such a lode should have been located prior to the time of application for placer patent to make it a known lode. It is enough that it be known to the applicant or known to the community generally, or else disclosed by workings and obvious to any one making a reasonable and fair inspection of the premises for the purpose of obtaining title from the government (3). Where, however, the lode has been properly located and the title is held by third parties, it is known to exist within the meaning of the law, and a placer application covering such a lode and making no mention of it, originates no title adverse to the lode claimant (4). Under such circumstances it is not even necessary for the lode claimant to adverse the placer application, though it would be advisable to do so.

As no title to a known vein not included in the placer application, can

(1) *Iron Silver Mng. Co. vs. M. & S. Mng. Co.*, 143 U. S. 402, 12 Sup. Ct. Rep. 548.

(2) *Brownfield vs. Bier*, 15 Mont. 403; 39 Pac. 461.

(3) *Jupiter Mng. Co., vs. Brodie Con. Mng. Co.*, 11 Fed. Rep. 573.

(4) *Noyes vs. Mantle*, 127 U. S. 343.

be conveyed by a placer patent, the fee simple to all such known lodes continues in the United States until it parts with the same in accordance with law. It may be located as other veins or lodes. The placer grantee can never acquire title to such lode by adverse possession, since the statute of limitations does not run as against the United States.

PATENT FOR KNOWN LODE.—Whenever it is ascertained by inquiry instituted by the Land Department, or determined by a court of competent jurisdiction, that a lode exists within the boundaries of the land covered by a placer patent, and that such lode was known to exist at the date of the application for such patent, a patent will issue for the lode claim if the law has been in other respects fully complied with (5). If the lode claim was a valid, subsisting location at the date of placer location, patent will issue for the full width of surface rightfully claimed (6). If the lode location was made after the placer location, patent will issue for surface twenty-five feet wide on each side of the lode (7).

Before the placer claimant applies for patent he should search his claim diligently to discover if lodes exist therein, and if they do, he should state the fact in his application, and make it include an application for the lodes as well. When a valuable lode is developed in placer ground after patent, there is always the danger that adverse claimants will attempt to show that the lode was known to exist at the date of the placer application. This danger constitutes an infirmity in such patents which should be guarded against by diligent examination of the ground in the presence of witnesses before patent is sought (8).

(5) South Star Lode, 20 L. D. 204.

(6) Noyes vs. Mantle, *Supra*.

(7) North Star Lode, decided Land Dept., March 10, 1896. Also Mt. Rosa Mng. Co. vs. Palmer, 56 Pac. Rep. 176.

(8) The foregoing chapter has been taken verbatim, with annotations, from Howell's Miners' Code, and is a concise and accurate statement of the law upon the subject.

CHAPTER XXI.

POSSESSORY RIGHTS IN MINING CLAIMS.

United States Law.

Sec. 2332, Rev. Stat.—“Where such a person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining claims of the state or territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim; but nothing in this chapter shall be deemed to impair any lien which may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of a patent.”

MERE POSSESSION of a mining claim and working of the same for the statutory period will not of itself give one a right to the claim. The statute quoted presupposes a valid entry and a possession under a claim of right, and was enacted to lessen the burden of proof upon old claims, in California and elsewhere, the records of which in many cases had been destroyed. No patent will issue to an applicant claiming under this provision unless he brings himself squarely within it by a full compliance with its terms (1).

A POSSESSORY RIGHT to non-mineral land in Alaska is a right to the sole occupancy and use of such land, and the prior right to enter and purchase the same from the government whenever a law may be enacted for its entry and purchase. This is evidently on the theory that where there is no method provided for the acquisition of title (as in case of shore or tide lands for commercial purposes in a new territory) the first one in possession will be entitled to hold such possession and have the first right to enter the same when a method for entry and purchase is provided by law. But in case of mineral lands, a method by location and development is provided by law, and mines can be acquired only by that method. Hence a location in due form should be made and no reliance placed upon mere possession (2).

(1) *McCowan vs. McLay*, 40 Pac. Rep. 602.

(2) *Carroll vs. Price*, 81 Fed. Rep. (District Court Alaska) 137.

CHAPTER XXII.

RIGHTS AND PROPERTY IN MINING CLAIMS, AND LEASE AND SALE THEREOF.

United States Law.

Sec. 2322, Rev. Stats.—“The locators of all mining locations heretofore made or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists on the tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with state territorial and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.”

Sec. 2336.—“Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.”

Washington Law.

Sec. 3152, Bal. Code (quoted in full at page 15 ante) provides, with reference to lode claims, among other things, that the end lines of such claims shall be parallel to each other.

Sec. 3153.—“The locators of all mining locations heretofore made, or hereafter made under the provisions of this article, on any mineral

vein, lode or ledge on the public domain, and their heirs and assigns, so long as they comply with the laws of the United States and the state and local laws relating thereto, shall have the exclusive right to the possession and enjoyment of all surface included within the lines of their location, and of all veins, lodes and ledges throughout their entire depth, and the top or apex of which lies within the surface lines of such location, extending downward vertically, although such veins, lodes or ledges may so far depart from the perpendicular in their course downward as to extend outside of the vertical side line of said surface location."

Sec. 3157, Bal. Code provides among other requirements that "all location notices, bonds, assignments, and transfers of mining claims shall be recorded in the office of the County Auditor of the county where the same is situated, within thirty days after the execution thereof." In so far at least as this section affects location notices it has been repealed by the Act of 1899 quoted in this book. The only effect of a failure to so record "bonds, assignments and transfers" would be to invalidate the same as to any subsequent purchasers or incumbrancers in good faith for value without actual notice, and would in no manner affect such contracts as between the parties thereto, or as to any one having actual notice thereof.

MINING CLAIMS ARE PROPERTY, and as such are the subject of levy and sale upon execution. But under Sec. 5132, Bal. Code, which makes a judgment a lien upon the "real estate" of the debtor, a general judgment is not of itself a lien on a mining claim—a mere location. To make it such there must be an actual levy of execution (1). It would of course be a lien if patent therefor had issued to the debtor or his grantor.

MINING LOCATIONS ARE NOT COMMUNITY PROPERTY.—Mining claims, mere locations, prior to patent and the payment of any money therefor, are not community property, but are the separate property of the locator or his assignee. A wife is not entitled to dower in an unpatented mining claim, and hence it follows that

HUSBAND AND WIFE, as such, have no interest whatever in the mining locations made by the other (2). This remark applies to both Washington and Alaska. In either the claim may be transferred by the deed of the spouse holding the legal title.

REPRESENTATIONS made by a party concerning the character and existence of a mine for the purpose of securing a purchaser therefor are admissible in evidence in an action brought by a purchaser against the party making the statements to recover money paid on the pur-

(1) *Phoenix Mng. Co. vs. Scott*, 20 Wash. 48; 54 Pac. Rep. 777.

(2) *Black vs. Elkhorn Mng. Co.*, 163 U. S. 445; 16 Sup. Ct. Rep. 1101.

chase price, even though the representations were made to third parties; and in such an action the liability to repay moneys so paid on a sale obtained through fraud is a community liability, and the community estate of husband and wife is liable (3).

LEASES for a longer period than one year should be in writing and it is well to have the same recorded. Bonds for deeds and options to purchase must be in writing and should also be recorded. It is not the purpose of this work to treat leases, bonds, options or sales at any length, for this would involve an extended examination of the laws of contracts and the different state statutes upon the same. However

FORMS, for Mining Lease (lode), Option, Mining Lease and Option together (placer), Bond for Deed and so-called Grubstake Contract are submitted in Forms Nos. 10, 11, 12, 13 and 14, Appendix A.

OPTIONS to purchase are usually given with leases, and bonds for deeds are common. They amount to practically the same. The law as to such contracts when applied to mines differs materially from that applied to other real estate, most notably, however, in that time is of the essence of every contract to purchase mines, whether so stated in the contract or not, and an option given a party to purchase a mine can be specifically enforced against the person giving it although there is no corresponding obligation on the other party to purchase, and hence no mutuality in the contract (4).

A DEED is necessary to pass title to a mining claim, for the courts now treat such property as real estate. Formerly it was held that a written conveyance was unnecessary, but that rule seems to have been abandoned (5). The mineral rights may be transferred and surface reserved or vice versa.

GRUBSTAKE contracts are common and so well understood that little mention need be made of the same here. They need not be in writing (6). Such contracts, properly speaking, apply only to prospecting or search for minerals. A party who locates a mine in his own name while he is actually working under a grubstake contract will hold the title as trustee for the other party to the contract. When parties actually engage in mining a claim, a mining partnership is formed.

RIGHTS OF LOCATOR WITHIN THE CLAIM.—Within the lines of each location the owner has not only the right to the exclusive possession of the surface, but may be regarded as having the sole right to

(3) *Oudin vs. Crossman*, 15 Wash. 519; 46 Pac. Rep. 1047. An action to recover a broker's commission on a sale of a mine is also decided in *Bishop vs. Averill*, 17 Wash. 209.

(4) *Lindley on Mines*, Sec. 859. (5) Same authority, Sec. 642.

(6) *Raymond vs. Johnson*, 17 Wash. 232; 49 Pac. Rep. 492.

all mineral that may be found beneath the surface until some one can show a clear title to it as a part of some lode or vein having its top or apex in other territory. In other words, there is a presumption of ownership in every locator as to the territory covered by his location, and where other parties enter such territory, they are *prima facie* trespassers (7). The burden is upon them to show that they are rightfully there.

EXTRALATERAL RIGHTS.—By this term is meant the right of the locator of a valid claim to follow his vein on its dip beyond the vertical plane of the side line of his claim. No branch of mining law has given rise to more extensive litigation than the question of extralateral rights. We can here give only a brief outline of the present status of the law.

POSSESSION OF APEX NECESSARY.—Only such veins can be followed beyond the side lines as have their apex within the surface granted to the claimant. A patent cannot grant the vein and exclude the surface in which it apexes. It is void as to the portion of the vein so attempted to be granted (8).

PARALLELISM OF END LINES NECESSARY.—For the exercise of extralateral rights it is necessary that the end lines of the claim should be parallel. Hence it has been held that a triangular claim has no extralateral rights (9).

APEX CROSSING BOTH SIDE LINES.—For the exercise of the right to follow a vein beyond a side line, the direction of the apex should be along the course of the claim and not transversely to it. Hence where the apex crosses both side lines, it has been held that the side lines become end lines and terminate the claimant's right in that direction (10). In that case if the claimant has any extralateral right it is to follow the vein on its dip under the end line.

APEX CROSSING A SIDE LINE AND AN END LINE.—Where the apex crosses one end line and one side line, the claimant can follow his vein on its dip between the vertical plane of the end line crossed by the apex and a parallel plane drawn through the point where the apex crosses the side line (11).

CONFLICT UPON THE SURFACE.—Where two locations conflict upon the surface, the prior location takes the area in conflict. But if the junior locator apply first for patent and include in his application the

(7) *Cheeseman vs. Shreve*, 37 Fed. Rep. 36.

(8) *M. O. P. Co. vs. B. & M. Co.*, 20 Mont. 336; 51 Pac. Rep. 159.

(9) *Montana Co., Ltd., vs. Clark*, 42 Fed. Rep. 626.

(10) *King vs. Amy & S. Co.*, 152 U. S. 222; 14 Sup. Ct. Rep. 510.

(11) *Del Monte Mng. Co. vs. Last Chance Mng. Co.*, 171 U. S. 55; 18 Sup. Ct. Rep. 895.

area in conflict, it is necessary for the prior locator to adverse the application; otherwise the patent will convey to the junior locator a good title to the area in conflict.

Where two locations conflict upon the surface and the prior location is abandoned or becomes forfeited, the ground in conflict does not pass to the junior locator. If the latter desires to acquire title to the area in conflict after the forfeiture or abandonment of the elder location, he should relocate his claim. Otherwise the resumption of work on the prior location will revive it in its entirety, including the ground in conflict (12).

THE SPACE OF INTERSECTION, in case of cross lodes, mentioned in Sec. 2336, Rev. Stats., has been held by the more recent authorities to mean the intersection of the claims, and not the intersection of the veins. Hence, the prior location will in such cases take all the cross vein within its own lines; and the statement that the junior locator has a "right of way through the space of intersection" means simply that he has a right of way through the claim of the prior locator, and no more (13).

(12) *Johnson vs. Young*, 34 Pac. Rep. (Colo.) 173; *Oscamp vs. Chrystal River Mng. Co.*, 58 Fed. Rep. 293; 7 C. C. A. 233.

(13) *Calhoun Gold Mng. Co. vs. Ajax Gold Mng. Co.*, 59 Pac. Rep. (Colo.) 607. Action on injunction bonds in mining litigation, see *Donahue vs. Johnson*, 9 Wash. 187; 37 Pac. Rep. 322.

For

decl
cove
of c
depo
Clai
nort
and
from
width

decla
cover
place
cover
Lode
disco
and
the c
claim
four
the l

T
the to
being
point
of loc
300 fe

T
Count
on th
place

APPENDIX

APPENDIX A.

FORMS FOR GENERAL USE.

Form No. 1.—Notice of Lode Location for Posting on Claim.—Washington.

NOTICE IS HEREBY GIVEN: That the undersigned, who are (or have declared their intention to become) citizens of the United States, have discovered on this date at the place where this notice is posted, a vein or lode of quartz or other rock in place bearing gold and other valuable mineral deposits, and hereby locate and claim the same as the "Rainier" Lode Mining Claim. The general course of the vein so far as can be now ascertained is north and south, and the undersigned claim 1000 feet in a southerly direction and 500 feet in a northerly direction along the course of said vein or lode from the said point of discovery where this notice is posted, and a total width of 600 feet, or 300 feet on each side of the center of said vein.

Notice dated and posted this 23rd day of May, A. D. 1900.

RICHARD HUGHES,

DAVID HARUM,

Locators and Claimants.

Form No. 2.—Notice of Lode Location for Record.—Washington.

NOTICE IS HEREBY GIVEN: That the undersigned, who are (or have declared their intention to become) citizens of the United States, have discovered at the place herein stated a vein or lode of quartz or other rock in place bearing gold and other valuable mineral deposits, and after such discovery, on May 23rd, 1900, located and claimed the same as the "Rainier" Lode Mining Claim, and on said date posted on said claim at the point of discovery a notice in writing stating the name of the lode and of the locators and the date of discovery, and thereafter marked the surface boundaries of the claim so located by placing firmly in the ground at each corner of said claim a substantial post or stone monument not less than three feet high and four inches in diameter, each bearing the name of the lode and the date of the location.

The general course of the vein or lode so located is north and south, and the total length of surface claimed by said location is 1500 feet, the same being 1000 feet in a southerly and 500 feet in a northerly direction from the point of discovery and the center of the discovery shaft at which the notice of location was posted, and the total width claimed is 600 feet, the same being 300 feet on each side of the center of said vein or lode.

The said claim is situated in the Miller River Mining District in King County, Washington, about eight miles southwest of the station of Skykomish on the line of the Great Northern Railway, and about one mile above the place where Fiction Creek flows into Miller River, and is within Township

25 North of Range 11 East, and the discovery shaft on said claim is situated 300 feet north and 270 feet west of the southeast corner of Section 19 in said township, and the location is so distinctly marked on the ground that its boundaries can be readily traced. As the northwest portion of said claim is covered with brush and trees, the trees have been marked and blazed and the brush cut along the north end and west side lines of said claim in such manner as to indicate the location of such lines.

At the point of discovery on said claim where the notice of location was posted, the undersigned have sunk a vertical shaft to the depth of more than ten feet from the lowest part of the rim of such shaft on the surface, which shaft is ten feet in length along the vein and six feet wide, and shows a well defined crevice and valuable deposit of ore.

The undivided interests owned in said claim by the undersigned locators are indicated by the fractions set opposite the name of each.

RICHARD HUGHES.	$\frac{3}{4}$
DAVID HARUM.	$\frac{1}{4}$

State of Washington, County of King, ss:

Richard Hughes, being first duly sworn, says: That he is one of the locators and claimants named in and who executed the foregoing notice, and is the person who located the mining claim therein described; that said location was made in good faith; that he has read the foregoing instrument and knows the contents thereof, and that all the statements therein contained are true.

RICHARD HUGHES.

Subscribed and sworn to before me this 3rd day of July, A. D. 1900.

J. P. GLEASON,

Notary Public for Washington, residing at Seattle.

NOTE.—The description of the location of the claim given in the foregoing is merely for the purpose of illustration. It is not often that the section numbers, or perhaps even the township or range numbers can be ascertained, but if not, then care must be taken to secure a definite measurement of some initial point on the claim from some well known natural object or permanent monument. If the notice states nothing as to the interest taken by each claimant, it will be presumed that they take equal undivided interests.

Form No. 3—Notice of Lode Location for Both Posting and Record in Alaska.

NOTICE IS HEREBY GIVEN: That the undersigned, who are (or have declared their intention to become) citizens of the United States, have discovered at the place where this notice is posted on this 23rd day of May, A. D. 1900, a vein or lode of quartz or other rock in place bearing gold and other valuable mineral deposits, and hereby locate and claim the same as the "Seward" Lode Mining Claim. The general course of the vein or lode as far as the same can be now ascertained is east and west, and the undersigned hereby locate and claim the same 1000 feet in an easterly and 500 feet in a westerly direction from the point of discovery where this notice is posted, and a total width of 600 feet, the same being 300 feet on each side of the center of the said vein.

Notice dated and posted this date herein above written.

WILLIAM SWEENEY,
S. R. CLEMERSON.

Post the foregoing on the claim at the time of the discovery. Then for the notice to be recorded, add the following paragraph to the foregoing:

"The said claim is situated in the Eureka Mining District on Prince of Wales Island, Alaska, one and one-half miles due south of the townsite and harbor of Gowen on said island, and is so distinctly marked upon the ground that its boundaries can be readily traced, as follows: Beginning at the southeast corner of the said claim, which is marked by a granite boulder about seven feet high and ten feet in diameter, situated about 600 feet north-west from the bridge across Imaginary Creek on the Revilla road, and which boulder is marked "S. E. Cor. No. 1, Seward Lode Claim," and running thence west 1500 feet to a post marked "S. W. Cor. No. 2, Seward Lode Claim," running thence north 600 feet to a post marked "N. W. Cor. No. 3, Seward Lode Claim," running thence east 1500 feet to a post marked "N. E. Cor. No. 4, Seward Lode Claim," and thence south 600 feet to the place of beginning, all of which posts are not less than four inches in diameter and four feet high, set firmly into the ground, with a mound of earth and stone about four feet in diameter and two feet high around each post.

Dated this 4th day of June, A. D. 1900.

WILLIAM SWEENEY.

S. R. CLEMERSON.

Signed in the presence of:

WM. D. HARPER,

A. P. SWINEBURNE,

Witnesses.

NOTE.—The foregoing is subject to modification by the requirements which may be made by the local rules in the various mining districts. There is no method by which a form can be submitted for use in every mining district now or hereafter organized. One locating mines in any such district should fully inform himself as to the rules of that district and carefully follow the same. The foregoing form can readily be adapted, but perhaps not always adopted for use. See ante, p. 34.

Form No. 4.—Notice of Location of Placer Claim, Recommended for Use in Washington and Alaska for Both Posting on the Claim and Record.

NOTICE IS HEREBY GIVEN: That the undersigned, who are (or have declared their intention to become) citizens of the United States, have on this 23rd day of May, A. D. 1900, discovered at the place where this notice is posted, a valuable placer deposit bearing gold and other valuable minerals, and we do hereby locate and claim the same as the "Dewey Placer Mining Claim."

If on surveyed lands, add:

"The said claim is situated in the Moorish Basin in Lopez Island, San Juan County, Washington, and the tract hereby claimed and located, and upon which such discovery has been made and this notice posted, is the S. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of Section 23, in Township 35 North of Range 2 West, comprising twenty acres in all."

If on unsurveyed lands, the second paragraph should describe similar to the following:

"The said claim hereby located is a tract of land 660 feet wide and extending in a northeasterly direction 1320 feet along the northwesterly bank of what is known as Foster Creek, in Bonanza Mining District, on the Sumner Peninsula of Alaska. The point of discovery on said claim at which this notice is posted is situated on said northwesterly bank of said creek 1600 feet above the place where said creek flows into the Dayton River, and said discovery is distant from said bank 29 feet and is marked by a post five inches

in diameter and eight feet high, set firmly into the ground with a mound of earth and stone four feet in diameter and three feet high about said post, which is marked "Discovery Post, Dewey Placer, May 23, 1900," and running thence on a line parallel with said northwesterly bank of said creek 65 feet to the lower end of said placer claim; thence southeasterly toward the said stream to the southernmost corner of said claim, a point in said stream marked by a rock in place ten feet in diameter, rising about eight feet above the bed of said creek and marked "Cor. No. 1, Dewey Placer"; thence in a northeasterly direction following in a general way the course of said creek 1320 feet to the easternmost corner of said claim, which is marked by a blazed pine tree on the opposite or southeasterly bank of said stream, which tree is blazed on the south and west and marked "Cor. No. 2, Dewey Placer"; thence in a northwesterly direction at right angles to the said creek 660 feet to the northernmost corner of said claim, which is marked by a post four inches in diameter, five feet high, set firmly into the ground and marked "Cor. No. 3, Dewey Placer"; thence in a southwesterly direction parallel to and 660 feet distant from the center of said creek 1320 feet to the westernmost corner of said claim, a point marked by a post four inches in diameter and five feet high, set firmly into the ground and marked "Cor. No. 4, Dewey Placer"; thence in a southeasterly direction 660 feet to Corner No. 1 of said claim herein described."

Notice dated and posted this 23rd day of May, A. D. 1900.

FRANK P. VAN ORSDEL.

JOHN LEWIS.

HERBERT KENNEDY.

NOTES ON FORMS.

IN WASHINGTON it is required that the notice posted on the claim shall contain a description of the claim by reference to the legal subdivisions, if on surveyed land, and to natural objects or permanent monuments if upon unsurveyed lands. This would seem to require that the corners be definitely established if not actually located and marked before the notice is posted, in order that a proper reference to the same may be made in the notice. It is also required in Washington that this notice be recorded within thirty days, and that within sixty days at least ten dollars' worth of work for each twenty acres or fractional part shall be expended in developing the claim, and that upon the performance of such work or labor an affidavit thereof shall be filed. This last is of course not mandatory, and if the work was actually done, it could be proven by oral testimony.

IN ALASKA of course the details just recited are not required, but the locator must first familiarize himself with the local rules of the district and carefully follow the same. The form just given meets all usual requirements, and will perhaps be found sufficient to meet every requirements of each district. While it contains some statements that may not be required, yet the prudent locator will omit nothing that is therein suggested.

Form No. 5—Notice of Tunnel Location, for Posting at the Face of Tunnel; Recommended for Use Both in Washington and Alaska.

NOTICE IS HEREBY GIVEN: That the undersigned, who are (or have declared their intention to become) citizens of the United States, have on this 1st day of February, A. D. 1899, located a tunnel for the purpose of discovering, developing and working lodes and valuable deposits along the line thereof as herein described, which tunnel is named the "Honolulu Mining Tunnel," and is to be eight feet in height and six feet in width, and the claim hereby located extends three thousand feet in a southwesterly direction from the face of the tunnel where this notice is posted, which face or mouth of said tunnel is situated on the west bank of Hoosier Creek, 1800 feet north of

the Great Northern Railway bridge over said creek, in Snohomish County, Washington.

The undersigned intend to prosecute the construction of the said tunnel with due diligence and to claim and locate all veins, lodes and valuable mineral deposits discovered in said tunnel along the line thereof, to the extent of fifteen hundred feet in length along such veins or lodes and three hundred feet in width on each side thereof.

Notice dated and posted this date above written.

DANIEL POWERS,
LEE D. MAURICE,
Locators and Claimants.

Form No. 6—Notice of Tunnel Location, for Record; Recommended for Use Both in Washington and Alaska.

NOTICE IS HEREBY GIVEN: That the undersigned, who are (or have declared their intention to become) citizens of the United States, did on February 1st, A. D. 1899, locate the "Honolulu Mining Tunnel" by posting at the face of said tunnel a notice in writing which contained the name of said tunnel of the undersigned locators, described said tunnel by stating its dimensions and general course, and stated the course and distance of the face of said tunnel from a well known natural object and permanent monument.

The said tunnel is to be eight feet in height and six feet in width and is to be extended in a southwesterly direction three thousand feet from the face or point of commencement thereof whereon said notice was posted as afore-said, and said face or point of commencement is situated on the west bank of Hoosier Creek, eighteen hundred feet north of the Great Northern Railway bridge over said creek, in Mammoth Mining District, Snohomish County, Washington; the course or line of said tunnel is so distinctly marked on the ground by means of posts and blazed trees that it can be readily traced.

The undersigned intend to prosecute the construction of the said tunnel with due diligence and to claim and locate all veins, lodes and mineral deposits discovered in said tunnel along the line thereof to the extent of fifteen hundred feet in length along such veins or lodes and three hundred feet in width on each side thereof.

Dated this 14th day of February, A. D. 1899.

LEE D. MAURICE.
DANIEL POWERS.

State of Washington, County of King, ss:

Lee D. Maurice, being first duly sworn, says: That he is one of the locators and claimants named in the foregoing Notice of Tunnel Location; that said location was made in good faith and for the purposes therein stated; that said claimants have expended already on said tunnel the sum of \$200.00, and have extended the same the distance of twenty-six feet, and it is their bona fide intention to prosecute the work on said tunnel with all reasonable diligence for the discovery and development of veins and lodes therein; that affiant has read and knows the contents of the foregoing Notice, and the same are true of his own knowledge.

LEE D. MAURICE.

Subscribed and sworn to before me this 14th day of February, A. D. 1900.

J. P. GLEASON,

Notary Public for Washington, residing at Seattle.

Form No. 7—Notice of Appropriation of Water; Recommended for Use Both in Washington and Alaska.

NOTICE IS HEREBY GIVEN: That the undersigned did on May 3rd, A. D. 1900, locate, appropriate and claim ten cubic feet of water per second of time of the waters of Papoose Creek, lying, being and flowing over Section 26 of Township 34 North of Range 3 East, in Skagit County, Washington, (or of the waters of Winston Creek, in Glacier Basin, about six miles north of the town of Thornton, in Harris Mining District, Alaska), at the point where this notice is posted, which water is intended for use in mining, irrigation and for other beneficial industries, and especially for use in the operation of the Kensington Placer, now owned and worked by the undersigned, and situated on the right bank of said creek, about two miles below said point of diversion as aforesaid. The said water is to be diverted and conveyed to said place by means of a dam and ditch, which ditch is to be four feet wide at the bottom, six feet wide at the top, and two feet deep, and to have a grade of three inches to each one hundred feet in length, and the undersigned hereby claim a right-of-way over all unappropriated lands of the United States through which said ditch shall be built, together with the right to repair and enlarge the said ditch whenever and wherever found necessary.

Measured from the bridge across said creek on what is commonly known as the Noyes & Upton wagon road, the point of diversion whereon this notice has been posted as aforesaid is 720 feet up the said creek in an easterly direction.

LEROY AMOS,
GUS T. MORGAN,
Appropriators and Claimants.

State of Washington, County of Skagit, ss:

Leroy Amos, being first duly sworn, says: That he is one of the appropriators and claimants named in and who executed the foregoing notice; that the said appropriation was made in good faith and for the uses and purposes therein stated; that a copy of the foregoing notice, not containing the last paragraph, however, was posted in a conspicuous place at the point of diversion above described, on May 3rd, 1900; that all the facts stated in the foregoing notice are true.

LEROY AMOS.

Subscribed and sworn to before me this 10th day of May, A. D. 1900.

H. S. CONNER.

Notary Public in and for Washington, residing at La Conner, Skagit County.

NOTE.—The foregoing notice must be posted in a conspicuous place at the point of intended diversion or storage, or both, and in Washington it must be filed for record within ten days after posting. The affidavit is not required, but in Washington at least will be advisable.

Form No. 8—Affidavit of Annual Labor.

State of Washington, County of Ferry, ss:

The undersigned, Thomas Boland, being first duly sworn, says: That he is familiar with the "Washoe" Lode Mining Claim, situated in Republic Mining District, Ferry County, Washington, notice of location of which is recorded at page 106 of Volume "A" of Mining Records of said county; that

during the period beginning October 2nd and ending November 26th, 1900, he performed forty days' labor of the reasonable value of \$2.50 per day upon said mining claim, and expended thereon in improvements the sum of \$12.00; that said work was done at the request of, and affiant was paid therefor by, Hugh McDermott, the reputed owner of said claim; that said labor and improvements consisted in sinking the shaft theretofore sunk on said claim to a depth of twelve feet, the further depth of twenty feet, or to a total depth of thirty-two feet, and in well and sufficiently timbering the same; that said work was performed and improvements made upon the said claim as the annual representation thereof for the year 1900, and this affidavit is made in proof of the same, and for the purpose of establishing permanent record evidence thereof in the manner provided by law.

THOMAS BOLAND.

Subscribed and sworn to before me, this 3rd day of December, A. D. 1900.

J. E. MORAN,

Notary Public for Washington, residing at Republic.

Form No. 9—Notice to Delinquent Co-Owner.

To Richard Pringle, his heirs and assigns:

You are hereby notified that during the year 1899 the undersigned have expended more than \$100 in labor and improvements upon the "Murphy" Lode Mining Claim, in Harris Mining District, Douglas Island, Alaska, in which mining location you claim an undivided one-third interest, as shown by the notice of location thereof of record at page 32 of Volume 3 of the Mining Records of said district. The said labor was performed as and for the annual representation of said claim for the said year of 1899, as required by the provisions of Section 324 of the Revised Statutes of the United States, and the amendment thereto approved January 22nd, 1880, concerning annual labor upon mining claims, and the same was the amount required to hold said claim for said year. You are further notified that unless within ninety days after the personal service of this notice upon you, or within ninety days after the publication thereof, you contribute your portion of such expenditure as a co-owner, to wit, the sum of \$33.33, your interest in the claim will be forfeited to the undersigned co-owners who have made such expenditure, and will become their property in the manner provided by law.

Dated, January 6th, 1900.

E. T. McKINSTRY.

ARTHUR DUGGAN.

NOTE.—The foregoing notice must be served in person upon the delinquent co-owner, or published in the newspaper nearest to the lode claim. If published in a daily paper it must be published for ninety days, and if in a weekly for thirteen weeks. The delinquent co-owner has ninety days after personal service, or ninety days after completed publication, in which to contribute his portion. If he fails to do so a copy of the notice of forfeiture should be filed for record. When filed it should be accompanied by an affidavit of the party who made the personal service, or of the publisher who published the notice, and also by the affidavit of the co-owners who made the expenditure, to the effect that the ninety days have elapsed and the delinquent co-owner has not paid or contributed his share. The following forms are submitted as such proofs:

Form No. 9a.

United States of America, District of Alaska, ss:

E. T. McKinstry, being first duly sworn, says: That he is personally acquainted with Richard Pringle, the delinquent co-owner to whom the foregoing notice was directed; that on January 6th, 1900, he personally delivered to said Pringle, in Juneau, Alaska, a notice, of which the foregoing is a copy, signed by affiant and his co-owner, Arthur Duggan, as indicated therein.

E. T. MCKINSTRY.

Subscribed and sworn to before me, this 6th day of January, A. D. 1900.

JOE P. DALY, Notary Public.

Form No. 9b.

United States of America, District of Alaska, ss:

Phil. Goodwin, being duly sworn, says: That he is the publisher of the Douglas Island Terror, a weekly newspaper published nearest the "Murphy" Lode Mining Claim described in the foregoing notice; that the said notice was published in said newspaper for fourteen consecutive weeks, the first publication thereof appearing in the issue of January 6th, 1900, and the last publication thereof appearing in the issue of April 7th, A. D. 1900.

PHIL. GOODWIN.

Subscribed and sworn to before me, this 30th day of April, 1900.

JOE P. DALY, Notary Public.

Form No. 9c.

United States of America, District of Alaska, ss:

E. T. McKinstry and Arthur Duggan, being duly sworn, say: That they are co-owners of the "Murphy" Lode Mining Claim described in the foregoing notice, and are the persons whose names are subscribed thereto; that the said Richard Pringle, to whom the same is directed, has wholly failed to perform any work or labor, or to make any improvements upon said mining claim for the year 1899, or to pay or contribute to the undersigned any portion of the amount by them expended therefor, although more than ninety days have elapsed since the personal service upon him (or publication) of the foregoing notice.

E. T. MCKINSTRY.

ARTHUR DUGGAN.

Subscribed and sworn to before me this 11th day of October, 1900.

JOE P. DALY, Notary Public.

Form No. 10—Mining Lease (Lode Claims).

THIS INDENTURE, Made this 1st day of May in the year of our Lord 1900, between William D. McCarthy and James P. Gleason, of Seattle, Washington, lessors, and James B. Gallagher, of Butte, Montana, lessee.

WITNESSETH: That the said lessors, in consideration of the royalties, covenants and agreements herein contained, do by these presents hereby lease unto the said lessee all of the following described mining claims and mining property, situated in the Twenty-Mile Mining District, in the Copper River region of Alaska, commonly known as the "Horseshoe" group of min-

ing claims, which group is situated about twenty-two miles northwest from the town of Valdez, and consists of the "Acme," "Eureka," "Golden," "Horse-Shoe" and "Leigh" Lode Mining Claims, located by Dudley Barnes on August 6th, 1898, and notices of location whereof are recorded in the office of the Mining Recorder of said district,

TO HAVE AND TO HOLD, unto the said lessee, for the term of one year from the date hereof, or until noon of May 1st, 1901, unless sooner terminated by forfeiture or mutual agreement.

AND in consideration of such lease, the said lessee covenants and agrees with the said lessors as follows:

1. To enter upon said mine, or premises, and work the same mine fashion, in manner necessary to good and economical mining, so as to take out the greatest amount of ore possible, with due regard to the development and preservation of the same as a workable mine, and to the special covenants hereinafter reserved.

2. To work and mine said premises as aforesaid steadily and continuously from the date of this lease with at least two persons employed underground, for at least twenty shifts each in each calendar month.

3. To well and sufficiently timber said mine at all points where proper, in accordance with good mining, and to repair all old timbering wherever it may become necessary.

4. To allow said lessors and their agents from time to time to enter upon and into all parts of said mine for purposes of inspection, and to use for that purpose any means of ingress and egress provided therefor.

5. To not assign this lease or any interest thereunder, and to not sublet the said premises or any part thereof, without the written assent of said lessors, and to not allow any person not in privity with the parties hereto, to take or hold possession of said premises, or any part thereof, under any pretense whatever.

6. To occupy and hold all cross or parallel lodes, spurs or mineral deposits of any kind which may be discovered by the said lessee, or by any person under him, in any manner, by working within or from the demised ground, as the property of said lessors, with privilege to said lessee of working the same as parcel of said leased premises.

7. To keep at all times the drifts, shafts, tunnels and other workings thoroughly drained and clear of loose rock and rubbish, unless prevented by extraordinary mining casualty, and to do all mining in a clean, workman-like manner, and to sort carefully all ores for shipment.

8. To do no underhand stoping, and to make all shafts 7 feet long by 4 feet wide in the clear, and all drifts 6 feet high by 4 feet wide in the clear.

9. To pay the said lessors as royalty five per cent. of the net mill returns of all ores to be extracted which run less than \$30 to the ton, and 10 per cent. of all ores which run \$30 and not less than \$50 to the ton, and 15 per cent. of all ores running more than \$50 to the ton; but all ore extracted from said mine is to be delivered by said lessee to some mill, smelter or ore buyer or sampling works, in Seattle or Everett, Washington, and the royalties due said lessors are to be deposited to their credit with the purchaser of said ore at the time the returns are received.

10. To deliver to said lessors the said premises, with the appurtenances

and all improvements in good order and condition, with all drifts, shafts, tunnels and other passages thoroughly clear of loose rock and rubbish, and drained, and the mine ready for immediate continued working (accidents not arising from negligence alone excusing), without demand or further notice, on the said 1st day of May, 1901, at noon, or at any time previous, upon demand, for forfeiture.

11. And, finally, that upon violation of any covenant or covenants hereinbefore reserved, the term of this lease shall, at the option of the said lessors, expire, and the same and said premises, with the appurtenances, shall become forfeited to said lessors; and said lessors or their agent may thereupon, after three days' notice and demand of possession in writing, served personally upon said lessee or his agent, or in the absence of both, posted in a conspicuous place on said leased premises, enter upon said premises and dispossess all persons occupying the same, with or without force, and with or without process of law; or, at the option of said lessors, the said tenant and all persons found in occupation may be proceeded against as guilty of unlawful detainer.

Each and every clause, covenant and condition of this instrument shall extend to and include the heirs, personal representatives and assigns of each and every party hereto.

IN WITNESS WHEREOF, The said parties have hereunto set their hands and seals, in the City of Seattle, Washington, on this day and year in this instrument first above written.

WILLIAM D. MCCARTHY. (SEAL)

JAMES P. GLEASON. (SEAL)

JAMES B. GALLAGHER. (SEAL)

If an option to purchase the mine be given with the lease (which is usually done), insert after paragraph 11 the following:

"In consideration of the acceptance of the foregoing lease, and the performance of the covenants thereof, the said lessors grant to said lessee the option to purchase said mining claims or premises, on or before May 1st, A. D. 1901, by depositing in the Seattle National Bank, of Seattle, Washington, to the credit of said lessors, on or before noon of said day, the sum of \$20,000, and upon notice of such deposit the said lessors agree to make, execute, acknowledge and deliver, at their own cost, to said lessee, or to such person as he may direct, a good and sufficient deed of conveyance to said mining claims and premises, free from all incumbrance; *Provided, however*, that the surrender or forfeiture of the foregoing lease for any cause shall at once render this option void, and terminate the privilege hereby granted.

NOTE.—If the foregoing be intended for record (and all instruments affecting mines, in Washington at least, should be recorded) it should also be acknowledged by the owners of the property in the manner provided by law for the acknowledgement of deeds. Any notary public or other officer entitled to take such acknowledgement will furnish form for same.

Form No. 11—Option to Purchase.

IN CONSIDERATION of the sum of One Dollar now paid, the receipt whereof is hereby acknowledged, we, the undersigned, William D. McCarthy and James P. Gleason of Seattle, Washington, hereby grant to Wilbra H. Swett and E. H. Metcalf of the same place, an option to purchase the following described mining claims and mining property, situated in the Twenty-

Mile Mining District, in the Copper River region of Alaska, commonly known as the "Horse Shoe" group of mining claims, which group is situated about twenty-two miles northwest from the town of Valdez, and consists of the "Acme," "Eureka," "Golden," "Horse Shoe," and "Leigh" Lode Mining Claims, located by Dudley Barnes on August 6th, 1898, and notices of location whereof are recorded in the office of the Mining Recorder of said district, for the sum of \$25,000, by deposit of said amount to our credit at the Seattle National Bank of Seattle, Washington, on or before noon of July 30th, 1901. Within three days after receipt of written notice of such deposit we agree to make, execute, acknowledge and deliver, at our own cost, to the said Swett and Metcalf, or to such person as they may in writing direct, at said bank, a good and sufficient deed or deeds of conveyance of said mining claims and property, free from incumbrance.

IN WITNESS WHEREOF, We have hereunto set our hands and seals, in the City of Seattle, Washington, on this 1st day of May, A. D. 1900.

WILLIAM D. MCCARTHY. (SEAL)

JAMES P. GLEASON. (SEAL)

Add usual acknowledgment.

Form No. 12—Mining Lease (Placer Mine), With Option to Purchase.

THIS INDENTURE, Made and entered into on this 3rd day of April, A. D. 1900, by and between Edward J. Walsh and John J. Miller of Tacoma, Washington, parties of the first part, hereinafter called the lessors, and Florence P. Leehey of Iowa City, Iowa, party of the second part, hereinafter called the lessee.

WITNESSETH: That the said lessors, in consideration of the royalties to be paid and the covenants to be performed by the said lessee as hereinafter stated, hereby lease, demise and let unto the said lessee the lower divided one-half (the same being 660x660 feet in dimensions) of that certain Placer Mining Claim known and designated as No. 3 below Boston Creek on the Salomon River in the Bonanza Mining District, between Golovin Bay and Cape Nome, Alaska, together with the rights and privileges of entering upon and over the said property, and to prospect the same for gold and the precious minerals in whatever deposits the same may be found, and to mine and extract the same, and to reduce the same to any commercial or market value.

TO HAVE AND TO HOLD, Unto the said lessee, for the period of three years from the date hereof, or until noon of April 3rd, A. D. 1903, unless sooner terminated by forfeiture or mutual agreement.

IN CONSIDERATION of such lease and privileges, the said lessee covenants and agrees to and with the said lessors, as follows:

1. To enter upon the said mining claim and premises as soon as convenient, and in any event on or before July 1st, A. D. 1900, and to at once begin to prospect and exploit the same for the purpose of discovering thereon placer deposits of gold and other valuable minerals, in whatever form the same may be found, and to continue such work with due diligence as long as weather and the circumstances in the community will permit.

2. To work and mine the said premises as aforesaid steadily and continuously from the date of such entry, with at least two persons employed

thereon for at least fifteen days in each calendar month during the working season, and to expend thereon each calendar month during the working season not less than \$500 in actual money, to be paid as wages to employees working upon the said property. And it is understood that term "working season" as used in this contract shall mean the portion of any year during which placer mining may be prosecuted in said community.

3. To work said mining claim and premises hereby leased in the most practical manner known to good mining in that particular region, and to such extent as to develop said property and discover its value as a placer mine, and to produce therefrom the greatest values in ores and minerals, extracted at the minimum of cost; and to that end the said lessee agrees to install such machinery, devices and appurtenances as may be in general use and best suited to mining in the community and to the peculiar conditions of the property hereby leased. And it is understood that the privilege hereby granted to prospect and work said property shall also be construed a privilege to employ thereon any new and approved machinery for the purpose of testing the value of the same in placer mining, and the final adoption of the same in general use on such claim if found satisfactory.

4. To keep all sluices, ditches, drains, water ways and passage ways cleared of loose rock and rubbish, in such manner as to promote the usefulness of the property from year to year as a workable mine, and to do no act thereon with a view to immediate gain or profit during the term of this lease which would ultimately impede mining operations or impair the operating conditions of said mining claim at a future date, and generally to so conduct operations as to conform to the laws of the United States and the District of Alaska, and the local rules and regulations of miners, and to do no act and suffer no default which might in any manner involve the said lessors in liability of any kind or character.

5. To pay and deliver to the said lessors, as royalty, twenty-five per cent., or one-fourth, of all gold dust and mineral extracted from said property, which sum shall be delivered by the said lessee to the lessor Walsh, or to any person whom he may direct, immediately after each clean up, or at such times as he may demand the same; and to that end it is agreed that said lessee shall give to the said Walsh, or the authorized agent of said lessors, notice of the time of each clean up, and permit him to be present and assist at the same.

6. To deliver the said premises, with the appurtenances and all improvements placed thereon, except machinery, to the said lessors, in good order and condition, upon the expiration of this lease, or at any time sooner, upon the expiration of notice, upon demand for forfeiture, as hereinafter stated.

7. Finally, it is agreed that time is of the essence of this lease as to each condition thereof, and upon the failure of the said lessee to perform any or all of the covenants herein contained, this lease and all rights and privileges thereunder shall at the option of the said lessors, expressed by the said Walsh or their authorized agent, be at once forfeited, and the said lessors may cause notice in writing of their election to declare such forfeiture to be delivered to said lessee, or in his absence to be posted in a conspicuous place on said leased property, which notice shall specify the grounds upon which such forfeiture has been declared. That thereupon the said lessee shall have the period of five days in which to repair any injury

caused to said premises through his act or neglect, or through the act or neglect of any person claiming under him, and a similar length of time in which to comply fully with any other condition herein specified and in the performance of which failure has been made; and at the expiration of said period, if such defect has not been cured, the said lessors, or their agents, may at once, with or without further demand, and with or without notice or legal process, enter into and upon the premises hereby leased, and may dispossess the said lessee and all persons thereon claiming under him or otherwise, and shall retain any royalties delivered as the stipulated rents of said property, and may proceed against the said lessee to recover for any damages which they may have sustained through his acts, defaults or negligence.

The right is reserved by said lessors to enter upon and over said property at all reasonable times, for the purpose of inspection, and for the purpose of obtaining access to and from any other property owned or operated by said lessors.

This lease and the privileges hereby granted shall not be assignable, except with the consent of the said lessors, but in all other respects each and every clause, covenant and condition herein contained shall extend to and include the heirs, personal representatives and assigns of each and every party hereto.

In consideration of the foregoing lease, and the faithful performance of the same by the said lessee, the said lessors grant to him the right to purchase the premises hereby leased, to wit, the divided lower half (660x660 feet in dimensions) of the placer claim known as No. 3 below Boston Creek, on Salomon River aforesaid, on or before December 1st, A. D. 1900, for the sum of Ten Thousand Dollars (\$10,000), or in default of this option he shall have the right to purchase the said premises on or before the 1st day of December, 1901, for the sum of Twenty Thousand Dollars (\$20,000), which sum shall in either event be deposited in the First National Bank of Seattle, Washington, to the credit of the said lessors, on or before the date herein set, and to that end the said lessors herewith agree to execute, acknowledge and place in escrow in said bank their good and sufficient deed of conveyance to said lessee of said property; but it is stipulated that time is of the essence of this option, and should the said sum not be deposited promptly at the date herein specified, then this option, and all the rights of the said lessee thereunder, shall at once be forfeited, without further act or declaration on the part of the said lessors.

The forfeiture, surrender or termination of the above lease for any cause, shall render this option void, and the above mentioned payment cannot thereafter be tendered with any effect.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals, on this day and year in this instrument first above written.

Signed in the presence of:

EDWARD J. WALSH. (SEAL)

JNO. G. EVANS,

JNO. J. MILLER. (SEAL)

J. F. O'BRIEN,

FLOR. P. LEEHEY. (SEAL)

Who witness the signatures of said lessors.

T. H. McBRIDE,

JOHN J. NEY,

Who witness the signature of said lessee.

Usual acknowledgment should be added.

Form No. 13—Bond for Deed.

KNOW ALL MEN BY THESE PRESENTS: That the undersigned John Walker of Snohomish, Washington, and William Myers of Index, Washington, parties of the first part, are held and firmly bound unto Thomas Everett of Seattle, Washington, in the penal sum of Ten Thousand Dollars, for the payment of which well and truly to be made, they bind themselves and their heirs, personal representatives and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is that if the said parties of the first part, on receipt of notice in writing that there has been deposited to their credit in the First National Bank of Seattle, Washington, the sum of Ten Thousand Dollars, on or before noon of July 5th, A. D. 1900 (and time is of the essence of this obligation), will at once make, execute, acknowledge and deliver to said obligee, or to such person as he may in writing direct, a good and sufficient deed of conveyance to the "Merrimac" Lode Mining Claim in Fidalgo District, King County, Washington, described in the Notice of Location thereof recorded at page 332 of Vol. 6 of Mining Records in the office of the Auditor of said County, free from all incumbrance, and including all mineral and mining rights and privileges therein, then this obligation shall be null and void; otherwise to be and remain in full force and effect.

Signed with our hands and dated this 4th day of April, A. D. 1900.

JOHN WALKER.

WM. MYERS.

Add usual acknowledgment.

Form No. 14—"Grub-Stake" Agreement.

THIS AGREEMENT, Made this 10th day of December, A. D. 1899, between Walter S. Ayres of Butte, Montana, party of the first part, and Jerry Brown of Spokane, Washington, the party of the second part:

WITNESSETH: That whereas, the said party of the second part has this day procured and furnished for the party of the first part an outfit suitable for prospecting and mining on the Koyukuk River and its tributaries in Alaska, together with all the necessary provisions, supplies and clothing, and has procured for the party of the first part transportation to St. Michaels, and has furnished and given to the party of the first part sufficient money to defray all of his necessary expenses in continuing the said journey, and in procuring the necessities of life.

Now therefore, for and in consideration of the premises, the said party of the first part agrees to go immediately to the gold fields on or near the Koyukuk River in Alaska, and to remain in the said region for the period of two years and to spend all of said period of two years in prospecting, in mining, or in laboring for others, or working claims on shares, as said first party may deem to be the best and most remunerative way of laboring. And the said party of the first part does herein agree to convey to party of the second part an undivided one-half interest in all mining properties located or procured in any way by him; and agrees to give to the party of the second part one-half the proceeds of labor, or results of such labor after deducting all necessary expenses; and the said first party further agrees for the period

of two years from this date to do all necessary work required by the laws of Alaska and of the United States, for holding the said mining properties, and to comply with all of the requirements of the said laws and of all lawful local regulations.

And the said party of the first part does further agree to account on the 1st day of October of each year to the said party of the second part for all of his earnings during the year prior thereto, whether the same be obtained in working mines himself or in laboring for others, and to give to the said party of the second part one-half of the said net earnings.

And the said party of the first part further agrees that as soon as any mining properties located by him can be worked at a profit, to devote all his time to the development of the said mining properties and to the working of the same, and all the mineral products taken from the said mines shall be equally divided, share and share alike, between the party of the first part and the party of the second part, said division to be made on the first day of October of each year.

It is further agreed between the parties hereto that on the first day of October of each year, before any division is made of the net earnings or of the mineral products, there shall be determined what amount of money will be necessary to procure the necessary outfit and supplies for the following year, and the said amount so determined shall be deducted from the earnings and from the proceeds of the mineral product before the said division is made, and said amount so deducted shall be specifically applied to the purchase of the necessary outfit and necessary supplies for the following year.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals in Spokane, Washington, the day, month and year first above written.

WALTER S. AYRES. (SEAL)

JERRY BROWN. (SEAL)

Witnesses:

T. F. DUNN.

H. C. COLTER.

Form No. 15—"Lay" on Placer Mining Claim.

I, the undersigned, Scott E. King of Council City, Alaska, hereby grant to Sig Schilling of the same place, a "lay" upon and license to mine and extract gold dust, ores and minerals from the upper half of my Placer Mining Claim designated as No. 2 on Crooked Creek above Ophir Creek in the Eldorado Mining District on the Sumner Peninsula of Alaska, (which claim is described in the Notice of Location thereof recorded at page 163 of Volume 2 of the Mining Records of said district), upon the express conditions, however, that all work shall be done in a good and workmanlike manner according to the most approved methods of mining in the district, and so as to extract and save the largest possible percentage of values from the ground worked; that all waste and debris shall be cleared and removed, and nothing done or permitted which may in any manner injure the future value of the premises as a workable mine; that a royalty of twenty (20) per cent. of all gold dust, ores and minerals taken from said premises is hereby reserved and shall be paid or delivered to the undersigned King or his agent author-

ized in writing to receive the same, immediately after each clean-up and weighing thereof, and personal notice shall be given to the said undersigned or such authorized agent of each clean-up. This is intended to be merely a license to work and operate said mining premises, and is revocable at any time at will.

Dated at Council City, Alaska, this 12th day of June, 1900.

SCOTT E. KING.

SIG SCHILLING.

Witnesses:

M. H. COHEN.

PATRICK C. KEARNS.

APPENDIX B.

MISCELLANEOUS STATUTORY PROVISIONS.

Alaska.

From the Carter Act recently passed by Congress.

Sec. 202, Title III, Civil Code for Alaska. "Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

* * * * *

"(4) Wharves, docks, piers, chutes, booms, ferries, bridges of all kinds, private roads, plank and turnpike roads, railroads, canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines and farming neighborhoods with water, and draining and reclaiming lands, and for floating logs and lumber on streams not navigable, and sites for reservoirs necessary for collecting and storing water."

"(5) Roads, tunnels, ditches, flumes, pipes, and dumping places for working mines; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines; also an occupancy in common by the owners or possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, and sites for reservoirs necessary for collecting and storing water."

From the Act of May 17, 1884, 23 Stats. L. 24; Supp. Rev. States. (2nd Ed.), p. 432.

"Sec. 7. That the general laws of the State of Oregon now in force are hereby declared to be the law in said district, so far as the same may be applicable and not in conflict with the provisions of this act or the laws of the United States; * * * the said district court shall have exclusive jurisdiction in all cases in equity, or those involving a question of title to land, or mining rights, * * *."

"Sec. 8. That the said district of Alaska is hereby created a land district, and a United States land office for said district is hereby located at Sitka. The commissioner provided for by this act to reside at Sitka shall be ex-officio register of said land office, and the clerk provided for by this act shall be ex-officio receiver of public moneys, and the marshal provided for by

this act shall be ex-officio surveyor-general of said district. And the laws of the United States relating to mining claims, and the rights incident thereto, shall, from and after the passage of this act, be in full force and effect in said district, under the administration thereof herein provided for, subject to such regulations as may be made by the Secretary of the Interior, approved by the President: *Provided*, That the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress: *And provided further*, That parties who have located mines or mineral privileges therein under the laws of the United States applicable to the public domain, or who have occupied and improved or exercised acts of ownership over such claims, shall not be disturbed therein, but shall be allowed to perfect their title to such claims by payment as aforesaid: *And provided also*, That the land not exceeding six hundred and forty acres at any station now occupied as missionary stations among the Indian tribes in said section, with the improvements thereon erected by or for such societies, shall be continued in the occupancy of the several religious societies to which said missionary stations respectively belong until action by Congress. But nothing contained in this act shall be construed to put in force in said district the general land laws of the United States."

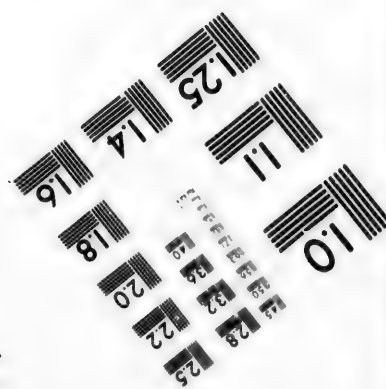
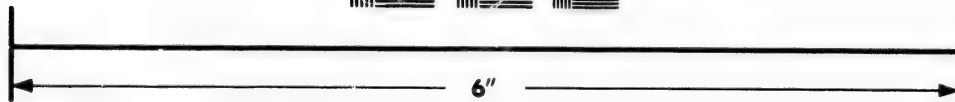
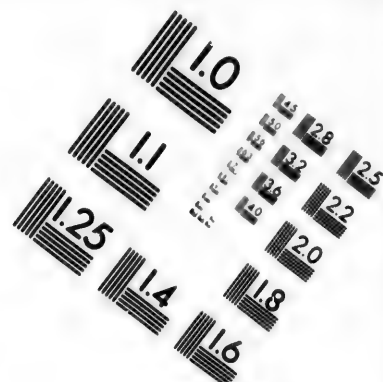
Sec. 4 of the same act provides for the appointment of a clerk of court who shall be ex-officio secretary and treasurer of the district and ex-officio recorder of deeds, and mortgages and certificates of location of mining claims and other contracts relating to real estate (1).

Washington.

MINING CORPORATIONS.

Section 4280, Bal. Code.—"In incorporations already formed, or which may hereafter be formed under this chapter, where the amount of the capital stock of such corporation consists of the aggregate valuation of the whole number of feet, shares, or interest in any claim in any mining claim in this state, for the working and development of which such corporation shall be or have been formed, no actual subscription to the capital stock of such corporation shall be necessary; but each owner in said mining claim shall be deemed to have subscribed such an amount to the capital stock of such corporation as under its by-laws will represent the value of so much of his interest in said mining claim, the legal title to which he may by deed, deed of trust, or other instrument vest or have vested in such corporation for mining purposes; such subscription to be deemed to have been made on the execution and delivery to such corporation of such deed, deed of trust, or other instrument; nor shall the validity of any assessment levied by the board of trustees of such corporation be affected by the reason of the fact

(1) NOTE ON ALASKA LAW.—From the foregoing it will be noted that only the "general laws" of Oregon were extended to Alaska. We are advised that the District Court of the district has repeatedly held that the mining laws of the state of Oregon have never applied to Alaska, and the language of the act certainly supports this view. The laws of Oregon under this act, governed as to sales of real estate, and hence of patented mining claims. Of course, upon the passage of the Carter Act to provide a civil code for Alaska, the foregoing stands repealed, and from this date the only interest Alaska people can have in the Oregon laws will be with reference to rights acquired under the operation of the same.



Photographic Sciences Corporation

**23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503**



that the full amount of the capital stock of such corporation, as mentioned in its certificate of incorporation, shall not have been subscribed as provided in this section: Provided, That the greater portion of said amount of capital stock shall have been so subscribed: And provided further, That this section shall not be so construed as to prohibit the stockholders of any corporation formed, or which may be formed for mining purposes as provided in this section, from regulating the mode of making subscriptions to its capital stock and calling in the same by by-laws or express contract." (1).

LEASING MINERAL LANDS BELONGING TO THE STATE (2).

Sec. 2212. Bal. Code. "The commissioner of public lands of the state of Washington is hereby authorized to execute leases and contracts for the mining of gold, silver, copper, lead, cinnabar or other valuable minerals except coal, from any land now belonging to the state or from any lands to which the state may hereafter acquire title, subject to the conditions hereinafter provided."

Sec. 2213. "Any citizen of the United States finding precious minerals upon any lands belonging to the state of Washington may apply to the commissioner of public lands for a lease of any amount of land not to exceed the amount of land allowed by the United States mining laws for locating and recording mining claims, and same dimensions."

Sec. 2214. "The manner of locating a mineral claim upon state land shall be similar to the state law regulating locating mineral claims on government land: Provided, That any citizens that have found minerals on state lands previous to the passage of this act and have posted up notice setting forth the dimensions according to the mining law of the United

(1) NOTE.—This provision makes an actual subscription to the stock of a mining corporation unnecessary where such stock is to be paid for by conveyance to the corporation of a mine or mining claim within this state, for the development of which the corporation has been formed. The language of the section is not free from ambiguity, and whether a mining claim can be transferred in full payment of the entire capital stock of a mining corporation is a question. Hon. F. H. Brownell, of Everett, in a paper read before the Washington State Bar Association in July, 1898, suggests this doubt and states a conclusion in which we concur, viz.: That it will be well to assume that only the necessity of a subscription to the entire capital stock is abrogated in the case of a mining corporation, and that while a mining claim may be taken in payment of stock, it must not be overvalued.

(2) NOTE.—The foregoing has reference only to lands owned by the state and which contain valuable mineral deposits. Mineral lands were excepted from the grant to the state for educational purposes. This exception, however, had reference only to such lands as were known to be mineral at the time of the grant. If lands which have been granted to the state should afterwards prove to be mineral the title of the state is not thereby affected, and the state has chosen this method of leasing such lands.

STATE GEOLOGIST.—Sections 172-182 Bal. Code (Act of 1890) provide for the appointment of a state geologist, whose duty it is to collect information concerning minerals in the state; to assay samples of ores at a fixed schedule of prices, retaining specimens for the state museum, and to inspect mines upon request or complaint to him. We are informed that the first official appointed under this law published an interesting report, but the legislature has not appropriated for its support and the office is now vacant.

A MINING BUREAU was also authorized by an Act of 1890 (Sections 3145-50 Bal. Code), but is not now maintained. In 1891 an appropriation of fifty thousand dollars was made for a geological and mineralogical survey of the state, but the courts held that the appropriation therefor could not be disbursed under the act. Sections 3195-3211 Bal. Code provide a method by which the tax payers of any county may vote upon a proposition to prospect the county for mineral deposits, coal, oil, etc., but so far as we can learn no attempt has been made in any county to put into effect the provisions of the law.

States and the state of Washington, shall have prior right to lease the same, and shall have ninety days after the passage of this act to make application to the commissioner of public lands for a lease."

Sec. 2215. "The lessee may cut and use the timber found upon said premises for fuel and construction of buildings, required in the operation of any mine or mines on the premises; also the timber necessary for drains, tramways and supports for such mine or mines, and for no other purpose."

Sec. 2216. "Before any lease shall be granted the applicant shall pay to the state treasurer the sum of five dollars. The holder of a mineral lease, secured, as above, shall have two years to develop said mine or mines: Provided, That no more than five tons of ore shall be removed therefrom, for assaying or testing purposes, until a contract as hereinafter provided shall have been executed."

Sec. 2217. (As amended by act of March 18, 189.) "At any time prior to the expiration of said lease, the lease holder, or any assignee thereof, shall have the right to obtain from the said commissioner of public lands a contract which shall bind the state of Washington as the party of the first part, and the person, persons or corporations to whom said contract shall issue as the party of the second part, in a mutual observance of the obligations and conditions as specified therein (the contract provided for in this act shall be as follows):

THIS INDENTURE, Made this.....day of.....A. D. one thousand eight and....., by and between the state of Washington, party of the first part, and....., party of the second part,

WITNESSETH, that the party of the first part, in consideration of the sum of ten dollars to it in hand paid by the party of the second part, being the first annual payment as provided for in chapter 102, section 7, of the Session Laws of 1897, the receipt whereof is hereby acknowledged, and in further consideration of the covenants and conditions herein contained, to be kept and performed by the part... of the second part, does hereby contract, lease and demise to the part... of the second part for a term of thirty years from and after the.....day of....., one thousand eight hundred and....., the following described land situated in the county of....., in the state of Washington, viz.:....., which premises are leased to the part... of the second part for the purposes of exploring for, mining, taking out and removing therefrom the merchantable shipping ore, containing copper, lead, silver, gold and other minerals, which is or which hereafter may be found on, in or under said land, together with the right to construct all buildings, make all excavations, openings, ditches, drains, railroad's, wagon roads, smelters and other improvements upon said premises, which are or may become necessary or suitable for the mining or removal of ore containing copper, lead, silver, gold or other minerals from said premises, with the right, during the existence of this lease, to cut and use the timber found upon said premises for fuel, and so far also as may be necessary for the construction of buildings required in the operation of any mine or mines, on the premises hereby leased, as also the timber necessary for drains, tramways and supports for such mine or mines: Provided, however, that the part... of the second part

shall have the right at any time to terminate this agreement in so far as it requires the part... of the second part to mine ore on said lands, or to pay a royalty therefor, by giving written notice to the party of the first (part), which shall be served by leaving the same with the commissioner of public lands, who shall officially, in writing, acknowledge the receipt of said notice and the foregoing lease shall terminate sixty days thereafter, and all arrearages and sums which may be due under the same up to the time of its termination, as set forth in said notice, shall be paid upon settlement and adjustment thereof. The party of the first part further agrees that the part... of the second part shall have the right under this agreement to contract with others to work such mine or mines, or any part thereof, or to sub-contract the same and the use of the said land or any part thereof, for the purpose of mining for ore, with the same rights and privileges as are herein granted to the said part... of the second part."

Sec. 2218. "The terms and conditions on which the same may be mined shall be agreed upon by the commissioner of public lands and the lessee: Provided, That the royalty or tax to be paid by the lessee shall be graduated. All claims or mines that do not yield a net income of more than two thousand dollars shall pay a tax of ten dollars per year; over two thousand dollars and not to exceed ten thousand dollars, shall pay fifty dollars; from ten thousand dollars to one hundred thousand dollars, five per cent.; all above one hundred thousand dollars, ten per cent. Where the lessee commits fraud the penalty shall be the forfeit of the mine or mines, and all property pertaining thereto."

PROTECTION TO COAL MINERS.

Section 35, of Article II. of the Constitution of Washington provides that "The legislature shall pass necessary laws for the protection of persons working in mines, factories, and other employments dangerous to life or deleterious to health, and fix pains and penalties for the enforcement of the same." Sections 3158-85, Bal. Code, provide at length for the inspection and regulation of coal mines. It is not the purpose of this work, however, to enter into any discussion of the details or regulations of actual mining operations, and hence we will dismiss this subject by making only a general reference thereto.

INDIANS.

(Laws of 1899, page 155.) "Any Indian who owns within this state any land or real estate allotted to him by the government of the United States may with the consent of Congress, either special or general, sell and convey by deed made, executed and acknowledged before any officer authorized to take acknowledgments to deeds within this state, any stone, mineral, petroleum or timber contained on said land, or the fee thereof, and such conveyance shall have the same effect as a deed of any other person or persons within this state; it being the intention of this act to remove from Indians residing in this state all existing disabilities relating to alienation of their real estate."

APPENDIX C.

CRIMINAL STATUTES.

Alaska.**ROBBING FLUMES OR SLUICE BOXES; TRESPASS.**

Sec. 75, Penal Laws. "That any person who shall break or rob in any manner, or who shall attempt to break or rob, any flume, rocker, quartz, quartz vein, or lode, bed rock, sluice, sluice box, or mining claim not his own, or who shall trespass upon such mining claim, with the intent to commit a felony, shall, upon conviction thereof, be punished by imprisonment in the penitentiary not less than one nor more than five years, or by fine not less than one hundred nor more than one thousand dollars, or by both such imprisonment and fine."

Washington.**PROTECTION AGAINST ACCIDENTS FROM OPEN OR DANGEROUS SHAFTS OR HOLES ON MINING CLAIMS.**

Sec. 3186, Bal. Code. "Any person or persons, company or corporation, who shall hereafter dig, sink or excavate, or cause the same to be done, or being the owner or owners, or in the possession under any lease or contract, of any shaft, excavation, or hole, whether used for mining or otherwise, or whether dug, sunk, or excavated for the purpose of mining, to obtain water, or for any other purpose, within this state, shall, during the time they may be employed in digging, sinking, or excavating, or after they may have ceased work upon or abandoned same, erect, or cause to be erected, good and substantial fences or other safeguards, and keep the same in good repair around such works or shafts sufficient to securely guard against danger to persons and animals from falling into such shafts or excavations."

Sec. 3187. "Three persons being residents of the county, and knowing or having reason to believe that the provisions of the last preceding section of this article are being or have been violated within such county, may file a notice with any justice of the peace or police judge therein, which notice shall be in writing and shall state,—

1. The location, as near as may be, of the hole, excavation, or shaft;
2. That the same is dangerous to persons or animals, and has been left or is being worked contrary to the provisions of this chapter;
3. The name of the person or persons, company or corporation, who is or are the owners of the same, if known, or if unknown, the persons who were known to be employed therein;
4. If abandoned and no claimant, and;
5. The estimated cost of fencing or otherwise securing the same against any avoidable accidents."

Sec. 3188. "Upon the filing of the notice as provided in the preceding section, the justice of the peace or judge of the police court shall issue an order, directed to the sheriff of the county or to any constable or city marshal therein, directing such officer to serve a notice in manner and form as is prescribed by law for service of summons upon any person or persons, or the

authorized agent or agents of any company or corporation named in the notice on file, as provided in the last section."

Sec. 3189. "The notice thus served shall require the said persons to appear before the justice or judge issuing the same, at a time to be stated therein, not more than ten nor less than three days from the service of said notice, and show to the satisfaction of the court that the provisions of this article have been complied with; or if he or they fail to appear, judgment will be entered against him or them for double the amount stated in the notice on file; and all proceedings had therein shall be as prescribed by law in civil cases; and such persons, in addition to any judgment that may be rendered against them, shall be liable and subject to a fine not exceeding the sum of one hundred dollars for each and every violation of the provisions of this article, which judgments and fines shall be adjudged and collected as provided for by law."

Sec. 3191. If the notice filed with the justice of the peace or police judge, as aforesaid, shall state that the excavation, shaft, or hole has been abandoned, and no person claims the ownership thereof, said justice of the peace or judge shall notify the board of county commissioners of the county, or either of them, of the location of the same, and they shall, as soon as possible thereafter, cause the same to be so fenced or otherwise guarded as to prevent accidents to persons or animals; and all expenses thus incurred shall be paid as other county expenses: Provided, That nothing herein contained shall be so construed as to compel the county commissioners to fill up, fence, or otherwise guard any shaft, excavation, or hole, unless in their discretion the same may be considered dangerous to persons or animals."

SAFETY CAGES.

Sec. 3192. "It shall be unlawful for any person or persons, company or companies, corporation or corporations, to sink or work through any vertical shaft at a greater depth than one hundred and fifty feet, unless the said shaft shall be provided with an iron-bonneted safety cage, to be used in the lowering and hoisting of the employees of such person or persons, company or companies, corporation or corporations. The safety apparatus, whether consisting of eccentrics, springs or other device, shall be securely fastened to the cage, and shall be of sufficient strength to hold the cage loaded at any depth to which the shaft may be sunk, provided the cable shall break. The iron bonnet aforesaid shall be made of boiler sheet iron of a good quality, of at least three-sixteenths of an inch in thickness, and shall cover the top of said cage in such manner as to afford the greatest protection to life and limb from any matter falling down said shaft."

Sec. 3193. "Any person or persons, company or companies, corporation or corporations, who shall neglect, fail or refuse to comply with the provisions of the last preceding section of this article, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five hundred dollars nor more than one thousand dollars."

Sec. 3194. "Nothing contained in this article shall be so construed as to prevent recovery being had in a suit for damages for injuries sustained by the party so injured, or his heir or administrator or administratrix, or any one else now competent to sue in an action of such character."

ROBB

Se
shall a
lode, b
trespas
upon c
this st
one hu
impris

DEST

Se
remove
or mon
erected
name o
of the d
who sh
placed
identify
convict
dollars
jail not
act shal

FALSE

Sec
place in
not ext
not ext
or inter
felac pr

Sec
change,
samples
ing, or
intent t

Sec
make o
or caus
of a fel

Se
preced
thereof
thousa
one yer

TRESS

47-
Se
cut do

ROBBING SLUICE BOXES.

Sec. 7148. "Any person who shall break or rob in any manner, or who shall attempt to break or rob, any flume, rocker, quartz mill, quartz vein or lode, bed-rock sluice, sluice box, or mining claim not his own, or who shall trespass upon such mining claim with the intent to commit a felony, shall, upon conviction thereof, be punished by imprisonment in the penitentiary of this state not less than one nor more than five years, or by fine not less than one hundred dollars nor more than one thousand dollars, or by both such imprisonment and fine, as the court or judge thereof may direct."

DESTRUCTION OF MONUMENTS ON MINING CLAIMS.

Sec. 7146a. "Any person who shall wilfully and maliciously deface, remove, injure or destroy any location stake, side post, corner post, land mark or monument, or any other land boundary monument, the same having been erected or implanted for the purpose of designating the location, boundary or name of any mining claim, lode or vein of mineral, or for posting the name of the discoverer, locator or owner or date of discovery thereon; or any person who shall so deface, obliterate, remove or destroy any notice having been placed or posted, upon any mining claim for the purpose of marking or identifying the same, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail not exceeding one year: Provided, however, That the provisions of this act shall not apply to abandoned mining claims."

FALSE PRETENSE IN SALE OF MINES; FALSE ASSAYS.

Sec. 7169. "Any person who shall, with intent to cheat, wrong or defraud, place in or upon any mine or mineral claim any ores or specimens of ores not extracted therefrom, or exhibit any ore, or certificate of assay of ore, not extracted therefrom, for the purpose of selling any mine or mining claim, or interest therein, or who shall obtain any money or property by any such false pretenses or artifices, shall be deemed guilty of a felony."

Sec. 7170. "Any person who shall interfere with, or in any manner change, samples of ores or bullion produced for sampling, or change or alter samples or packages of ores or bullion which have been purchased for assaying, or who shall change or alter any certificate of sampling or assaying, with intent to cheat, wrong or defraud, shall be deemed guilty of a felony."

Sec. 7171. "Any person who shall, with intent to cheat, wrong or defraud, make or publish a false sample of ore or bullion, or who shall make or publish or cause to be published a false assay of ore or bullion, shall be deemed guilty of a felony."

Sec. 7172. "Any person violating any of the provisions of the last three preceding sections shall be deemed guilty of a felony, and upon conviction thereof shall be fined in any sum not less than fifty nor more than one thousand dollars, or by imprisonment in the penitentiary for not less than one year nor more than five years, or by both such fine and imprisonment."

TRESPASS ON STATE LANDS. Act of March 6, 1899. (Laws 1899, pp. 47-48.)

Section 1. "If any person shall cut down, destroy, injure, or cause to be cut down, destroyed or injured, any timber standing, growing or felled upon

any of the lands of the State of Washington before deed shall have been issued by the state therefor as provided by law, or shall take or remove or cause to be taken or removed from any such lands, any timber, wood, clay, sand or other material or substance thereon, or shall dig, quarry, take or remove any mineral (except by contract with the state), earth or stone from such lands, or shall cause to be dug, quarried, taken or removed, any mineral (except by contract with the state), earth or stone from such lands, or shall otherwise injure, deface or damage, or shall cause to be injured, defaced or damaged any such lands, he shall be deemed guilty of a misdemeanor."

Sec. 2. "That nothing in this act shall be so construed as to prevent any person who shall lease said lands or hold the same under contract with the state for the purchase thereof, and occupy the same for the purpose of a home, from cutting such timber as may be necessary for domestic use or to clear land for actual cultivation: Provided, That such lessee or contractor may sell such timber so cut in good faith for the purpose of clearing such land for cultivation: Provided further, however, That before any timber may be sold by any such lessee or contractor he must first obtain the written consent of the commissioner of public lands of the state of Washington to such sale; otherwise such lessee or contractor shall not have the benefit of the provisions of this section."

Sec. 3. "Any person or persons violating the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars, or by imprisonment in the county jail of the county in which such conviction was had, for a time not less than one month and not more than one year, or by both fine and imprisonment."

Acts of
U

Alaska
Act
Act
Ca

Washin
Ac

INDEX

Acts of Congress—

	Page
U. S. Rev. Stats., Sec. 2318.....	7
2319.....	8
2320.....	15
2321.....	8, 60
2322.....	67
2323.....	35
2324.....	15, 31, 49, 52
2325.....	58
2326.....	61
2327.....	59
2328 (obsolete).....	
2329.....	24
2330.....	25
2331.....	25
2332.....	66
2333.....	63
2334.....	59
2335.....	59
2336.....	67
2337.....	38
2339.....	39
2340.....	39
2347.....	42
2348.....	42
2349.....	43
2350.....	43
2351.....	43

Alaska Laws—

Act of May 14, 1884, Secs. 7 and 8.....	88
Act of May 14, 1898, Sec. 11.....	46
Carter Code of 1900, Sec. 13.....	33
15.....	22, 26
16.....	34
26.....	29
202.....	88

Penal Laws, Sec. 75.....	93
--------------------------	----

Washington Laws—

Act of 1899, Sec. 1.....	21
2.....	16
3.....	16
4.....	12
5.....	54

	Page
Act of 1890, Sec 6.....	50
7.....	50
8.....	54
9.....	16
10.....	25
11.....	26
12.....	32
13.....	32
14.....	32
Ballinger's Code, Sec. 2212.....	90
2213.....	90
2214.....	90
2215.....	91
2216.....	91
2217.....	91
2218.....	92
3151.....	15
3152.....	15
3153.....	67
3154.....	50
3155.....	32
3156.....	32
3157.....	32
3186.....	93
3187.....	93
3188.....	93
3189.....	94
3191.....	94
3192.....	94
3193.....	94
3194.....	94
4090.....	40
4091.....	40
4092.....	40
4093.....	40
4094.....	40
4095.....	41
4096.....	41
4097.....	41
4098.....	41
4099.....	41
4280.....	89
7146.....	95
7146a.....	95
7169-72.....	95
Abandonment of mining claim.....	55
Abbreviations used in this volume.....	6
Adverse claims.....	61
Adverse possession, title by.....	66
None as against the United States.....	11

Agenc
Alask

Allens

Amen
Annua

Apex o
Applie
Assays
Attorn
Beach
Blind l
Bond f
Borax,
Bound
Buildin
Carter
Cascad
Citizen

Citizen

Cape M
Coal l
Coal n
Co-owe

Comm
Compu
Corner
Corpor

Creek
Crimi

INDEX.

99

Page		Page
50	Agent, location by	17
50	Alaska Laws—as to placers	24
54	as to beach and shore lands	28-31
16	as to lode or quartz claims	19
25	as to timber and stone lands	46
26	as to mining districts and local rules	33-36
32	United States mining laws extended to Alaska	7, 27, 29, 88
32	Cape Nome beach claims	28
32	Criminal provisions affecting mines in Alaska	93
90	Robbing flumes, etc.	93
90	Forms for use in Alaska (Appendix A)	73
90	Allens, rights to acquire or hold mines in Alaska	9, 10
91	rights generally	11
91	Amended location	54
91	Annual labor on mining claims	49
92	On tunnel claims	38, 49
15	Form of affidavit for proof of	78
15	Purpose of recording affidavit	50, 52
67	What will count as such, and what will not	51-52
50	Road-building in Washington as annual labor	32-33
32	Apex of vein, general doctrine	70
32	Application for patent	58
32	Assays, false	95
93	Attorney, power of	17, 27, 31
93	Beach and shore lands, placer mining upon	28-31
93	Blind leads	38
94	Bond for deed	69, 86
94	Borax, may be located as placer	27
94	Boundaries, marking of	18
94	Building stone lands, how located	25, 27, 44
40	Carter Act (See Alaska Laws, Beach and Tide Lands, Records.)	
40	Cascade Mountains, no discovery shaft required west of	19
40	Citizens only can acquire mineral lands of United States	11
40	Women and children as citizens	10, 11
40	Citizenship, discussion as to (Chapter II.)	8
41	Proof of, in application for patent	8, 60
41	Cape Nome beach mining	28-31
41	Coal lands, how acquired	42
41	Coal mines, laws regulating operation of	92
41	Co-owner, forfeiture by	52
89	"Advertising out," manner of	53
95	Notice to, forms	79-80
95	Community property, unpatented mining claims are not	68
95	Computation of time	24
55	Corner monuments	18, 25
6	Corporations, mining, provisions of Washington Laws	89
61	Proof of citizenship by, in obtaining patents	60
66	Creeks, located as placers	27
11	Criminal statutes, Alaska	93
	Washington	93

	Page
Cross lodes	70-71
Deeds, bond for, form of	69, 86
Description of development work	23
Destruction of mining corners or monuments	18
Punishment for	95
Development work, required in Washington	16-18
Dimensions of location	17, 24-27
Districts, mining, and local rules and regulations	31
Ditches, with water rights	40
Discovery, necessary to location	12
of placer deposit on each 20-acre tract located	28
Discovery shaft	16
Dower, none in unpatented mining claims	68
Dredging	29-31
Eminent domain, for mining, etc., in Washington	41
in Alaska	88
End lines should be parallel	19
Entry of mineral lands	58-61
Evidence, recorded instruments as	23, 24, 50, 52
Exploration work necessary upon locations in Washington	15-19
Extralateral rights	70
False pretenses in sale of mines, penalty for in Washington	95
Community property liable for	69
Floating the claim	17
Forfeiture by co-owner, notice, proof, etc.	52
Forms for	79, 80
Strictly construed	53
Forms (See Appendix A.)	
Notice of lode location for posting—Washington	73
Notice of lode location for record—Washington	73
Notice of lode location for Alaska	74
Notice of placer location	75
Tunnel location notice—for posting	76
Tunnel location notice—for record	77
Water right appropriation	78
Affidavit annual labor	78
Notice to delinquent co-owner	79
Proofs of "advertising out" co-owners	80
Mining lease (lode)	80
Option to purchase lode claim	82
Mining lease (placer), with option to purchase	83
Bond for deed to mines	86
Grub-stake agreement	86
Lay on placer claim	87
Fraudulent representations on sale of mines	68
Geologist, state, in Washington	90
Grub-stake agreement	69
Form for	86
Husband and wife, no interest in mining location of the other	68
Indians, may sell mines in Washington	92

Know
Land
"Lay
Lien
Leas
Leas
Lime
Loca

Loca

Locat

Lode,
Lode

Mark
Mill
Miner
Miner
Miner

Mine
Miner

Min
Min

INDEX.

101

Page		Page
70-71	Known lode defined	64
69, 86	Lands subject to location under mineral laws	7
23	"Lay" on placer claim, form for	87
18	Lien of mining partners	57
95	Lease, form of	83
16-18	Lease, mineral lands of the state	90
7, 24-27	Limestone, may be located as mineral	13
31	Local rules, generally	31
40	In Alaska	33-34
12	Regulate mining on beach and tide lands	30
28	Location of lode claims	15-21
16	of lodes discovered in tunnels	38
68	of placer claims	24-28
29-31	of tunnel claims	35
41	of mill sites	38
88	of building stone	13, 24, 27
19	of timber and stone lands	44-49
58-61	of coal lands	42
50, 52	Made by agent or partner	17
15-19	Forms for (See Forms)	73-77
70	Amended locations	54
95	Who may make mining locations	8
69	One location only for each discovery	12
17	Dimensions of	17, 24-27, 35
52	Record of	21, 22, 33-34
79, 80	What may be located	13, 27
53	Locators, must be citizens of the United States	8-10
73	Need not be first discoverer of the claim located	55
73	Lode, definition of	12
74	Lode claims, dimensions of	15-18
75	Location of	15
76	Discovery of	12
77	Lodes within placers	63
78	Forms for locating	73
78	Marking boundaries	18
79	Mill sites	38
80	Mineral, definition of, by Washington Supreme Court	13
80	Mineral entry of lands for United States patent	58
82	Mineral lands, reserved from school and railway grants	14, 44
83	of state, lease of	90
86	subject to location	7
86	Miners' rules and regulations in organized districts	31-35
87	Mining claim. (See Location.)	69
68	Rights pertaining to	68
90	As property	54
69	Relocation of	52
86	Abandonment and forfeiture of	69
68	Either surface or minerals may be reserved by deed	89
92	Mining corporations, special provisions as to	31
	Mining districts and local rules	31

	Page
Mining partnerships	56
Minors may locate mining claims	10
Miscellaneous statutes	88
Monuments, corners of mines, description of	16-18
Permanent, what are	18
Destruction of, penalty	95
Natural objects and permanent monuments defined	18, 23
Necessity of complying with the law	11
New discovery, not necessary to re-location	55
Nome beach and shore lands (See Chapter VII.)	28
Non-mineral lands, use of timber from	45, 48
Notice of location. (See Forms, Location, Lode Claims, Placers.)	
Record of, in Washington	21
Record of, in Alaska	22
Liberally construed	17
Options, law concerning	69
Form for	82
Oregon Laws, formerly extended to Alaska	88
Overlapping of claims permitted	18
Ownership of stone taken from public lands	46
Parallel end lines to lode claims	19
Partner, location by	17
Partnerships, mining	56
Patent, application for, procedure (Chapter XVIII.)	58
Penal statutes	93
Permanent monuments defined	18, 23
Placer claims, general laws as to	24
On beach and shore lands in Alaska	28
Lodes within placers	63
What may be located as placer	27
When to conform to public surveys	27
Possessory rights to mining claims	66
Power of attorney, location by is valid	17, 27, 31
Priority of possession as to coal lands	44
Property in mining claims and mines	68
Protection to coal miners	92
Public domain, mining laws relate to	7
Receiver's receipt, issues when	61
Records, of locations, etc., in Washington	21
In Alaska	22
Old law in Washington	22
Purpose of	23
Regulations by local districts	31
Regulation of coal mines	92
Relocation and amended location	54
Representation of mining claims (See Annual Labor)	49
Resuming work after forfeiture	51
Returns of deputy mineral surveyor	14
Rights and property in mining claims	67
Roadway, on shore in Alaska	29

Rob
Safe
Sale
Salt
Sale

Scho
Secr
Shaf
Shif
Sixt
Slui
Surv

Tide

Tim

Tim
Tim
Fres
Tria
Tun
Tun
Veir
Veir
Ver
Wal
Wal
Wo

INDEX.

103

Page		Page
56	Robbing flumes, etc., in Alaska	93
10	Safety cages in Washington mines	94
88	Sales of mines	67
16-18	Salines, or salt lands	13
18	Sales of timber on public lands	45
95	of timber in Alaska	46-48
18, 23	School sections	14
11	Secretary of War, permits to mine from	30
55	Shafts and holes must be covered	93
28	Shifting the location	17
45, 48	Sixty-foot roadway on shore in Alaska	29
	Sluice boxes, robbing in Alaska	93
21	Surveys, public, placers conform to	27
22	Same as to coal lands	44
17	Tide lands, defined	28
69	rights to mine or dredge upon	29-31
82	Timber, use of and claims	44
88	Purchase of	44, 45
18	Purchase of in Alaska	46
46	Purchase of without land	45
19	Timber and stone lands	44
17	Time, computation of	24
56	Trespass on mines	93, 95
58	Triangular claims, no extralateral rights	70
93	Tundra claims	27, 29
18, 23	Tunnel rights	35
24	Vein or lode defined	12
28	Veins uniting or intersecting on course or dip	67, 71
63	Verification of location notices	24
27	Walls of vein or lode	13
27	War Department, regulates dredging below low tide	29-31
66	Water rights, chapter on (Chapter XI.)	39
27, 31	Women can locate mining claims	10
44		
68		
92		
7		
61		
21		
22		
22		
23		
31		
92		
54		
49		
51		
14		
67		
29		



Are You Going to the Mines?

If so, give us a call, as we carry many articles
that will be of use to you.

LIST OF USEFUL AND NEEDFUL ARTICLES OF DAILY USE BY MINERS AND PROSPECTORS

Snow Glasses of all descriptions
Mineral and Magnifying Glasses
Pocket Surveyor's Aneroid Barometers
Pocket and Sight Compasses
Thermometers registering to 80° below
zero
Thermometers, vest-pocket size
Field Glasses and Telescopes
Gold Scales
Magnets
Measuring Tapes
Hand Levels
Complete Line of Surveying and Draft-
ing Instruments

Buckskin Gold Dust Bags
Leather Money Belts
Gold Dust Belts
Chamois Skins
Bill Books and Pocket Books
Leather Watch Chains
Clasp and Sheath Knives and Cutlery
Pocket Drinking Cups
Pocket Mirrors
Pocket Combs
Pocket Toilet Cases
Pocket Match Safes

FULL LINE OF ALASKA CHARTS AND MAPS

LOWMAN & HANFORD

STATIONERY AND PRINTING CO.

616 FIRST AVENUE

SEATTLE, WASH.